

## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

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# Conversation Contents

Fwd: mop

## Attachments:

/1. Fwd: mop/1.1 M-37049 Reversal of M37036 Twin Metals Minnesota Application to Renew Preference Right Leases 122217.pdf

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 22 2017 13:38:48 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>, Roy Fuller <roy.fuller@sol.doi.gov>, "Sklar, Ryan" <ryan.sklar@sol.doi.gov>, Joshua Hanson <joshua.hanson@sol.doi.gov>, "Moody, Aaron" <Aaron.Moody@sol.doi.gov>, Laura Brown <laura.brown@sol.doi.gov>  
**Subject:** Fwd: mop  
**Attachments:** M-37049 Reversal of M37036 Twin Metals Minnesota Application to Renew Preference Right Leases 122217.pdf

FYI--this will be posted on the SOL webpage shortly.

----- Forwarded message -----

From: **Caminiti, Mariagrazia** <[marigrace.caminiti@sol.doi.gov](mailto:marigrace.caminiti@sol.doi.gov)>  
Date: Fri, Dec 22, 2017 at 3:35 PM  
Subject: mop  
To: Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

--  
**Marigrace Caminiti**

Executive Assistant to the Solicitor  
US Department of the Interior  
1849 C Street, NW, Rm. 6352  
Washington, DC 20240  
202-208-4423 - main number  
202-208-3111 - direct  
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**"Collier, Briana" <briana.collier@sol.doi.gov>**

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Fri Dec 22 2017 13:43:46 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: mop

Thanks Karen. Will the SOL Front Office share this with BLM, or should we?

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

\*New Phone: (505) 248-5604

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On Fri, Dec 22, 2017 at 1:38 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
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From: **Caminiti, Mariagrazia** <[marigrace.caminiti@sol.doi.gov](mailto:marigrace.caminiti@sol.doi.gov)>  
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Subject: mop  
To: Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

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**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 22 2017 13:50:21 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Subject:** Re: mop

I'll send it to Brian, Mike, Kathy, Tim, Mitch (and Karen M). Are there others I should send it to? --Karen

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## "Collier, Briana" <briana.collier@sol.doi.gov>

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**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Fri Dec 22 2017 13:54:06 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: mop

Could you please also copy Justin Katusak? That should do it. Hopefully Mitch will distribute it to the other ESO folks.

Briana Collier  
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FYI--this will be posted on the SOL webpage shortly.









# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO

DEC 22 2017

M-37049

## Memorandum

To: Director, Bureau of Land Management

From: Principal Deputy Solicitor Exercising the Authority of the Solicitor Pursuant to Secretarial Order 3345

Subject: Reversal of M-37036, "Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)"

On October 21, 2012, Twin Metals Minnesota (Twin Metals) filed an application with the Bureau of Land Management (BLM) to renew hardrock mineral leases MNES-01352 and MNES-01353 located within the Superior National Forest in Northeastern Minnesota. On March 8, 2016, the former Solicitor issued an M-Opinion entitled, "Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)" (M-37036), concluding that the BLM had discretion to either grant or deny Twin Metals' pending application to renew the two hardrock mineral leases. Twin Metals filed suit on September 12, 2016, challenging the M-Opinion.

After the United States Department of Agriculture Forest Service (Forest Service) withheld its consent to renew the leases, the BLM cancelled the leases in December 2016. In response to the decision not to renew their leases, Twin Metals asked for reconsideration of M-37036. After further review of the relevant documents and underlying legal framework, we believe that M-37036 erred in concluding that BLM has discretion to grant or deny Twin Metals' lease renewal application. Accordingly, this Memorandum withdraws and replaces M-37036.

For the reasons set forth below, the terms of the original leases issued to Twin Metals' predecessor-in-interest in 1966 remain the operative provisions governing lease renewal. The original 1966 leases provide Twin Metals with a non-discretionary right to a third renewal, subject to readjusted terms and conditions as allowed by the 1966 leases. Accordingly, while the United States maintains discretion to impose reasonable new terms and conditions in the lease renewal agreements, the BLM does not have the discretion to deny the renewal application.



## **Background**

### **Statutory Authority for Issuance of the Leases**

The leases are located in northern Minnesota on acquired Weeks Act<sup>1</sup> lands, as well as lands reserved from the public domain, that are managed as part of the National Forest System by the Forest Service. The Secretary's authority, as delegated to the BLM, for mineral disposition on the acquired lands is found in section 402 of Reorganization Plan No. 3 of 1946,<sup>2</sup> and 16 U.S.C. § 520, which governs mineral disposition on Weeks Act lands. The Secretary's authority, as delegated to the BLM, for mineral disposition on reserved National Forest System lands in Minnesota is 16 U.S.C. § 508b. Under these provisions, leasing for hardrock mineral development is allowed only if the Secretary of Agriculture has consented to the issuance of the lease.<sup>3</sup>

### **Negotiation and Issuance of the 1966 Leases**

The history of the original lease negotiations and the subsequent renewals is an important factor in determining the intent of the parties with respect to the right of renewal. The history began in 1952 when Twin Metals' predecessor-in-interest, the International Nickel Company, Inc. (INCO), followed successful prospecting activity by approaching the Department of the Interior (Department) regarding applying for hardrock mineral leases.

The two parties began negotiating potential terms in 1953, and INCO originally sought a 50-year lease from the Department.<sup>4</sup> The lease negotiations did not end for over ten years, in part because the parties disagreed on three major issues:

Term – INCO sought a 50-year term to increase certainty for its investors while the BLM wanted a maximum 20-year primary term;<sup>5</sup>

Royalty rates – the Department wanted higher royalty rates than INCO was willing to agree to pay;<sup>6</sup> and

Production assurances – the BLM sought assurance that INCO would begin production during the lease term.<sup>7</sup>

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<sup>1</sup> Pub. L. No. 61-436, § 6, 36 Stat. 961, 962 (1911) (codified as amended at 16 U.S.C. § 515).

<sup>2</sup> 60 Stat. 1097, 1099-1100, Section 402 (May 16, 1946).

<sup>3</sup> See *id.*; 16 U.S.C. § 508(b).

<sup>4</sup> Memorandum from United States Geological Survey (USGS) Chief, Conservation Division to file, "Nickel Leasing" (Aug. 13, 1953).

<sup>5</sup> Memorandum from P.W. Guild, BLM Chief, Branch of Ferrous Metals to file, "Meeting in Congressman Blatnik's office re Cu-Ni deposits in Minnesota" (July 9, 1965).

<sup>6</sup> Memorandum from USGS Chief, Conservation Division to USGS Associate Director, "Proposed preference right lease to International Nickel Company, Inc." (Oct. 29, 1965).

<sup>7</sup> Memorandum from BLM Director to DOI Assistant Secretary, Mineral Resources, "Proposed Preference Right Leases to International Nickel Company, Inc." (Oct. 5, 1965).



After several years of exchanging drafts of potential lease terms, the parties reached a compromise agreement on these issues:

- INCO agreed to accept the 20-year primary term;
- The BLM agreed to accept a lower yet escalating minimum royalty rate; and
- The BLM received some production assurances in the form of adjustable royalty rates on future production that would fluctuate depending on how soon the lessee began producing.<sup>8</sup>

As a result of these and other compromises, the original MNES-01352 and MNES-01353 leases awarded to INCO on June 1, 1966, were unique, borrowing terms from, but not utilizing, the BLM's Standard Lease Form in place at the time.

The royalty and renewal provisions were particularly distinctive. The first section of the leases provides the lessee with the exclusive right to mine on the leasehold for a primary term of 20 years and the right to renewals at 10-year intervals after the primary term:

Rights of Lessee. In consideration of the rents and royalties to be paid and conditions and covenants to be observed as herein set forth the Lessor grants to the Lessee . . . the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals . . . in, upon, or under [the described lands] . . . together with the right to construct and maintain thereon such structures and other facilities as may be necessary or convenient for the mining, preparation, and removal of said minerals, for a period of twenty (20) years *with a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 CFR § 3221.4(f) and the provisions of this lease.*<sup>9</sup>

The regulation referenced in the renewal clause provides in pertinent part that the “lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe.”<sup>10</sup>

Section 2 of the leases then sets forth most of the lessee's obligations, covering rental and royalty payments, bonding, inspection, payment of taxes, and non-discrimination provisions, among other things. Of importance for Twin Metals to hold the leases without production, section 2(c) provides for minimum royalty payments in lieu of production. Those provisions state that, beginning after the tenth year of the primary term, the lessee is required to mine a quantity of minerals such that the royalties would be equal to \$5 per annum per acre for the primary term and \$10 per annum per

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<sup>8</sup> See Memorandum from USGS Assistant Chief, Conservation Division, to file, “Phone call from Julian Feiss re meeting with International Nickel” (Aug. 18, 1965); Memorandum from USGS Director to the Secretary of the Interior, “Congressman John A. Blatnik may telephone the Secretary” (Jan. 10, 1966) (discussing the parties' differing positions on royalty rates and recommending a “performance clause” be added as a “reentry” clause for royalty adjustment that might be introduced permitting reevaluation and lowering of the royalty rates if justified after some operating experience”).

<sup>9</sup> Section 1(a) of Lease (emphasis added).

<sup>10</sup> 43 C.F.R. § 3221.4(f) (1966).

acre during each renewal or, in lieu of that production, pay royalties equal to the minimum royalty.<sup>11</sup> Section 2(c) also allows the lessor in its discretion to waive, reduce or suspend the minimum royalty payment for reasonable periods of time in the interest of conservation.<sup>12</sup> Pursuant to this section, INCO and its successors have paid over \$1.4 million dollars in royalties to the government.

Section 5, entitled “Renewal Terms,” is also unique by describing in detail BLM’s rights to readjust royalty rates and other terms upon renewal. As more fully discussed in the analysis section below, section 5 creates a production incentive for the lessee by providing BLM with only limited readjustment rights if the lessee was producing by the end of the initial 20-year term. On the other hand, if the lessee was not producing before the initial term ended (and if BLM had not extended the period for commencement of production), then BLM would have the right, starting with the first renewal, to readjust terms and conditions without these limitations.

Finally, section 14, entitled “Royalty Adjustment,” is unique by providing another production incentive. It requires lowering the royalty rate in the second ten years of the primary lease term and in the first three renewals if the lessee sinks a shaft or otherwise commences commercial development within five years of obtaining all the necessary permits and authorizations.<sup>13</sup>

#### **Activity during the Primary Term of the 1966 Leases**

INCO fulfilled the royalty rate reduction provisions of section 14 by sinking a 1,100 foot mine shaft on lands leased under MNES-01352 in 1967 to obtain bulk sampling. But no production occurred under the leases during the 20-year primary term. Under the terms of section 2(c) of the 1966 leases, INCO’s minimum royalty payments became due beginning with the 1976-1977 lease year. The BLM granted INCO’s requests for waivers of the minimum royalty payments for a five-year period, from June 1, 1976, through May 31, 1981, because the State of Minnesota was conducting environmental studies of the proposed mining operations during that time period, which prevented INCO from proceeding with development of the leases.<sup>14</sup> INCO again requested a waiver of minimum royalty payments for the five-year period between June 1, 1981, and May 31, 1986, citing copper and nickel prices too low to allow for development. The BLM denied this second request, reasoning in part that the royalty payment was the only diligence requirement in the leases:

The provision for minimum royalty in lieu of production requirements was a lease term arrived at through pre-lease negotiations between the Bureau and INCO. The intention of the minimum royalty is to spur development of the resource and, in effect, is the only diligence requirement contained in the subject leases. Waiver of minimum royalty removes all incentive for the timely development of the leases.<sup>15</sup>

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<sup>11</sup> See § 2(c) of the 1966 leases.

<sup>12</sup> *Id.*

<sup>13</sup> Section 14 of the 1966 leases.

<sup>14</sup> Memorandum from BLM Associate District Manager, Milwaukee, to the State Director, Eastern States Office, “Recommendation Regarding an Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Inc.” (Aug. 28, 1985), at 2.

<sup>15</sup> *Id.* at 3.

Beginning in 1985, after the BLM denied the waiver request, INCO started submitting minimum royalty payments as required by the leases.

### **The 1989 Lease Renewals**

INCO timely filed its first lease renewal application on May 14, 1986.<sup>16</sup> After receiving legal advice from the Office of the Solicitor confirming that the lease could be renewed despite the lack of production,<sup>17</sup> the BLM requested the consent of the Forest Service, and the Forest Service agreed to the renewals, finding the terms and conditions of the original leases to be “adequate to prevent or mitigate unacceptable impacts and that no additional conditions need to be added prior to their renewal provided that none of the terms and conditions related to [Forest Service surface] authority are diminished in any manner.”<sup>18</sup>

After then receiving the recommendations of the BLM Assistant District Manager in Milwaukee, the BLM issued a decision renewing the leases on September 12, 1988, and enclosed a new lease form for INCO’s signature.<sup>19</sup> The new lease would have altered several terms and conditions of the leases, including raising the base royalty rate to 5% and lowering the minimum royalty payment to \$3 per acre per year.

Before the new lease was signed, the BLM took the unusual step of withdrawing the leasing decision “because the new lease forms submitted for signature will alter the terms and conditions of the original leases.”<sup>20</sup> The withdrawal of the decision was made after an internal reassessment of the renewal form against the original lease terms. An internal BLM memorandum explained that the minimum royalty rate should not be lowered to \$3 per acre as the then-current regulations

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<sup>16</sup> The regulations at 43 C.F.R. § 3522.1-1 (1985) state that renewal applications “must be filed in the appropriate land office within 90 days prior to the expiration of the lease term.” The “within 90 days” language in this regulatory provision allows lease renewal applications to be filed at any time before the expiration of the lease term. The lessee filed an application for extension of the term of the leases on May 14, 1986—30 days before the end of the primary twenty-year term on June 14, 1986, which was “within 90 days” of the lease expiration. Consequently, the renewal application was timely filed.

<sup>17</sup> Memorandum from Associate Solicitor, Energy and Resources, to Deputy State Director, Mineral Resources, Eastern States Office, BLM, “Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Incorporated for Leases ES 01352 and ES 01353” (Apr. 2, 1986).

<sup>18</sup> Decision of United States Department of Agriculture (USDA), Forest Service, Superior National Forest Supervisor, Clay Beal, “Finding of Categorical Exclusion, Conditions of Extending Bureau of Land Management Leases” (Feb. 6, 1987). The Regional Forester subsequently affirmed the agency’s consent to the 1989 lease renewals. Decision of United States Department of Agriculture (USDA), Forest Service, Eastern Region, Regional Forester, Floyd J. Marita, “BLM Preference Right Leases, ES 01352 and ES 01353 Inco Alloys International, Inc. – (Superior NF – MN) (June 19, 1987).

<sup>19</sup> Memorandum from BLM Assistant District Manager for Energy and Minerals, Milwaukee to State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Leases ES-1352 and ES-1353” (July 9, 1986); Decision by Bureau of Land Management Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Preference Right Leases Renewed, Lease Forms Transmitted for Signature” (Sept. 12, 1988).

<sup>20</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Decision Vacated” (Oct. 27, 1988).

directed, but should be set at the \$10 per acre rate outlined in the 1966 leases, as “[t]his high minimum royalty payment was agreed to through intensive negotiations and is intended to serve as the ‘production incentive’ or ‘diligent development’ provision in the leases, and should not be changed.”<sup>21</sup> Likewise, with such a production incentive, the memorandum stated that it would be “inappropriate” to impose an additional production requirement on the lessee in the lease renewal, especially “when no other hardrock leases in our District contain such a requirement.”<sup>22</sup> The memorandum concludes, “Because of the highly negotiated terms and conditions of these two leases, which contain many references to requirements to be applied during lease renewal periods, I recommend that these leases be renewed under the existing terms and conditions and in their present form, i.e., not on the new lease form.”<sup>23</sup> Based on this recommendation, the BLM withdrew its initial leasing decision as noted above.

A few months later, the BLM granted INCO’s renewal application in a new decision. This decision expressly stated that the renewal was on the same terms and conditions of the original leases: “The Forest Service and the Bureau of Land Management have agreed to the renewal of the enclosed Preference Right Leases MNES 1352 and MNES 1353 under the existing terms and conditions of the original lease. Enclosed are lease renewal forms transmitted for your signature and return to this office.”<sup>24</sup>

The forms the BLM transmitted for signature were the Standard Form 3520-7 (December 1984), with some terms written in and other terms referencing the 1966 leases, which were attached in full to the standard forms. On the standard forms, the BLM typed in single and double asterisks next to section 2 (a) and (b), and included text later in section 14, entitled “Special Stipulations,” that corresponded to the single and double asterisks. These provisions stated that the “terms and conditions of the production royalties remains [sic] as stated in the attached original lease agreement,” and that “[t]he minimum annual production and minimum royalty is \$10.00 per acre or a fraction thereof as stated in the attached original lease agreement.”<sup>25</sup> The forms also contain a standard renewal provision stating that the lease is effective “for a period of ten years . . . with preferential right in the lessee to renew for successive periods of ten years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period.”<sup>26</sup>

During this time period, INCO filed to assign its interests in the leases to American Copper and Nickel Company, Inc. (“American Copper”) in May 1988. The BLM granted the assignments, effective January 1, 1991. Although exploration work continued, neither INCO nor American Copper began production on the leases during the first renewal period.

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<sup>21</sup> Memorandum from BLM Assistant District Manager for Solid Minerals, Rolla, Vincent Vogt, to the State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Hardrock Mineral Leases MNES-1352 and MNES-1353” (Oct. 14, 1988) at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Preference Right Leases Renewed, Lease Forms Transmitted for Signature” (Apr. 25, 1989).

<sup>25</sup> 1989 lease renewal forms, at 2–3.

<sup>26</sup> *Id.* at 1.

## **The 2004 Lease Renewals**

American Copper timely applied for a second renewal of the leases on March 15, 1999.<sup>27</sup> The Forest Service consented to the renewals, finding the terms and conditions to be sufficient.<sup>28</sup> The BLM issued its decision granting the lease renewals on November 12, 2003, and directed American Copper to sign the enclosed Preference Right Lease forms and return them to the BLM office within 30 days.<sup>29</sup> As lease forms, the BLM again provided Standard Form 3520-7 (December 1984), with identical typed-in provisions to those of the 1989 leases, and again attached the 1966 leases in full.<sup>30</sup> The leases were renewed with an effective date of January 1, 2004.

On April 7, 2004, American Copper filed to assign its interests in the leases to Beaver Bay Joint Venture. The BLM approved the assignment on March 30, 2005, to be effective April 1, 2005. Although exploration work continued, neither American Copper nor Beaver Bay Joint Venture began production on the leases during the second renewal period.

## **The 2012 Renewal Application and Issuance of M-37036**

On October 21, 2012, Beaver Bay Joint Venture timely filed for a third renewal of the leases.<sup>31</sup> Through BLM-approved assignments and transfers, Franconia Minerals (US) LLC (Franconia) later became the current leaseholder of MNES-1352 and MNES-1353. Franconia is a wholly-owned subsidiary of Twin Metals.

In processing the 2012 application for renewal, the BLM identified the need for a legal opinion to determine whether it had discretion to grant or deny the lease renewal. The Solicitor issued M-Opinion 37036 on March 8, 2016, in response to the request.<sup>32</sup> In M-37036, the Solicitor disagreed with Twin Metals' assertion that the original lease terms governed and provided a perpetual right to renew the leases every ten years. The M-Opinion found that the more recent 2004 lease terms governed renewal, and while the "2004 lease terms give the lessee preference over other potential lessees to lease the lands in question, they do not entitle the lessee to non-

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<sup>27</sup> The lessee applied for a second renewal on March 15, 1999, which was 109 days before the end of the first lease renewal on July 1, 1999. The 1999 regulations instruct lessees to "[f]ile an application [for renewal] at least 90 days before the lease term expires." 43 C.F.R. § 3511.27 (1999). Consequently, the 1999 renewal applications were timely filed.

<sup>28</sup> Decision of the USDA Forest Service, Regional Forester, Randy Moore, to BLM State Director, Eastern States Office, "Renewal of Preference Right Leases MNES 1352 and MNES 1353" (July 18, 2003).

<sup>29</sup> Decision of BLM Chief of Use Authorization, Division of Resources Planning, Use and Protection, to American Copper and Nickel Co., "Additional Requirements to be Met" (Nov. 12, 2003).

<sup>30</sup> See 2004 lease renewal forms, at 2–3.

<sup>31</sup> The 2012 renewal application was submitted 438 days before the end of the second renewal on January 1, 2014. The filing requirements in the current regulations are the same as those in the 1999 regulations. *Id.* (2014). Consequently, the 2012 application was timely filed.

<sup>32</sup> *Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)*, M-37036 (Mar. 8, 2016).

discretionary renewal of the leases.”<sup>33</sup> The M-Opinion also concluded that even if the terms of the 1966 leases governed, they did not provide a non-discretionary right to renewal. Instead, M-37036 found that “[u]nder the original 1966 lease terms . . . the lessee was required to commence production within the twenty-year primary term to qualify for three renewals of right.”<sup>34</sup> Because no production has occurred, the M-Opinion concluded that no right to renewal existed: “Twin Metals Minnesota does not have a non-discretionary right to renewal, but rather the BLM has discretion to grant or deny the pending renewal application.”

After receiving the M-Opinion, the BLM requested the Forest Service’s consent determination on the lease renewals.<sup>35</sup> After taking public comment on the question, the Forest Service submitted a letter to the BLM Director on December 14, 2016, stating it did not consent to renewal of the leases.<sup>36</sup> As a result of the Forest Service’s denial of consent, the BLM issued a decision denying renewal of the leases on December 15, 2016.<sup>37</sup>

### **Analysis**

Twin Metals has consistently asserted that the renewal provisions of its 1966 leases govern and provide a right of renewal every ten years as long as it complies with the terms of the leases. In contrast, M-37036 concluded that Twin Metal’s renewal rights were governed by the terms of the 2004 lease forms, and that those terms were unambiguous and provided Twin Metals only with the right to be considered for a renewal at the discretion of the Forest Service and the BLM. In addition, M-37036 asserted that even if the terms of the 1966 leases governed, Twin Metals still would not be entitled to a non-discretionary right of renewal because it did not begin production within its extended primary term.

As discussed below, Twin Metals is entitled to a third renewal. First, the renewal terms of the 2004 lease form do not govern. The form is ambiguous, and the intent of the parties to keep operative the terms of the 1966 leases becomes clear once the BLM’s decision files are examined.<sup>38</sup> M-37036 also misconstrues the terms of the 1966 leases. They do in fact provide for a third, non-discretionary right to renewal without regard to whether production has begun. Accordingly, Twin Metals has the right to renewed leases, subject to the imposition of reasonable new terms and conditions as allowed by the 1966 leases.

In the sections below, we first discuss why the 1966 renewal terms govern, and then discuss the meaning of those terms.

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<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> Letter from Karen Mouritsen, State Director, BLM Eastern States Office, to Kathleen Atkinson, Regional Forester, Eastern Region, Forest Service (June 3, 2016).

<sup>36</sup> Letter from Thomas L. Tidwell, Chief, Forest Service, to Neil Kornze, Director, BLM (Dec. 14, 2016).

<sup>37</sup> Decision by BLM State Director, Eastern States Office, Karen Mouritsen, to Twin Metals Minnesota Chief Operating Office, Ian Duckworth, “Lease Renewal Application Rejected” (Dec. 15, 2016).

<sup>38</sup> M-37036 did not examine this extrinsic evidence because of its underlying premise that the 2004 lease forms were unambiguous.

## **Twin Metals' Renewal Application is Governed by the Renewal Terms of the 1966 Leases**

M-37036 concluded that the renewal rights of Twin Metals are governed by the terms of BLM standard form 3520-7 (Dec. 1984) rather than the terms of the 1966 leases. To reach this conclusion, M-37036 found that the 2004 lease forms “are each complete, integrated documents that contain all necessary lease terms and are duly signed by the lessee and lessor.”<sup>39</sup> The M-Opinion states that the lease forms only incorporate two portions of the 1966 leases through section 14 of the 2004 lease form, and that “[n]either of these imported provisions includes the lease renewal provisions of the 1966 leases.”<sup>40</sup> Consequently, according to M-37036, since the time that the 2004 lease form was executed, “the renewal provisions of the 1966 leases have no longer applied and the only renewal terms are those described in the 2004 leases . . . .”<sup>41</sup>

M-37036 treats the 1989 lease renewal, which was identical to the one issued in 2004, very differently. The M-Opinion finds that “the 1989 renewal was effectively a ten-year extension of the 1966 lease terms . . . .”<sup>42</sup> In other words, M-37036 recognized that the 1989 form incorporated all the provisions of the 1966 leases, including the renewal terms, while opining that the identically worded form in 2004 did not.<sup>43</sup>

M-37036 misapprehends the meaning and effect of the 2004 lease forms. As discussed below, the 2004 lease terms are ambiguous as to the extent to which the provisions of the 1966 leases are incorporated. Properly analyzed, examining both the text of the leases and the intent of the parties as expressed during negotiations, the renewal provisions found in the 1966 leases remain operative, and provide the non-discretionary right to a third renewal.

The normal principles of contract construction lead to the foregoing conclusion.<sup>44</sup> When construing a contract, we must first examine the plain meaning of its express terms.<sup>45</sup> The task is to determine the intent of the parties at the time they contracted, as evidenced by the contract itself.<sup>46</sup> If the terms are clear and unambiguous, the provisions must be given their plain meaning

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<sup>39</sup> M-37036 at 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* M-37036 then opined that the renewal language used in the 2004 lease form made the renewal discretionary, stating that the “Department has consistently interpreted this provision as not entitling the lessee to an automatic right of renewal . . . .” *Id.* at 5. We do not address in this replacement opinion the meaning of the 2004 lease renewal language because, as explained later, the parties intended the renewal terms of the 1966 leases to remain operative.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> As discussed below, *see* footnote 62 and accompanying text, M-37036 attempts to distinguish the two situations by finding that the 1989 renewal differs “because the BLM’s discretion was limited in 1989 but not in 2004.” *Id.* at 6. We discuss below that the discretion did not vary between the two renewals and, even if BLM had differing discretion, it intended the 2004 renewal to maintain the terms of the original 1966 leases, just as the 1989 renewal had done.

<sup>44</sup> The normal rules of contract construction govern the interpretation of agreements between the government and a private party. *Thoman v. Bureau of Land Mgmt. (on recon.)*, 155 IBLA 266, 267 (2001) (citing *Anthony v. United States*, 987 F.2d 670, 673 (10th Cir. 1993)); *Press Machinery Corp. v. Smith R.P.M. Corp.*, 727 F.2d 781, 784 (8th Cir. 1984)).

<sup>45</sup> *Textron Def. Sys. v. Widnall*, 143 F.3d 1465, 1468 (Fed. Cir. 1998).

<sup>46</sup> *Greco v. Dep’t of Army*, 852 F.2d 558, 560 (Fed. Cir. 1988).

and extrinsic evidence is inadmissible to interpret them.<sup>47</sup> However, where contract terms are unclear or ambiguous, an examination of extrinsic evidence is appropriate to properly interpret the contract in accordance with the parties' intent.<sup>48</sup>

Applying these principles, it is evident that the 2004 leases are ambiguous and extrinsic evidence must be examined to determine the intent of the parties. Rather than being "complete, integrated documents," the leases attach without full explanation the entirety of the 1966 leases and do not include an integration clause that states that the 2004 lease forms are the complete expression of the parties' agreement.<sup>49</sup> These facts alone warrant an examination of extrinsic evidence to determine the intent of the parties.<sup>50</sup>

The lack of an integration clause in the 2004 leases is particularly important given the parties' interpretation of the identically worded 1989 leases that the Department has consistently acknowledged as incorporating the 1966 lease terms in their entirety.<sup>51</sup> The use of the identical form in 2004 without explanation and without an integration clause at the very least creates an ambiguity as to whether the parties intended the 2004 leases to be treated the same as the 1989 leases or completely differently as interpreted by M-37036.<sup>52</sup>

Even absent that ambiguity, the text of section 14 in the 2004 leases is ambiguous. Section 14 contains two special stipulations that incorporate the 1966 leases:

Sec. 14. Special Stipulations --

\* The terms and conditions of the production royalties remains [sic] as stated in the attached original lease agreement.

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<sup>47</sup> *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).

<sup>48</sup> *BP Amoco Chem. Co. v. Flint Hills Res., LLC*, 600 F. Supp. 2d 976, 981 (N.D. Ill. 2009); see also 5-24 Corbin on Contracts § 24.7. Terms may be ambiguous where the language is susceptible to more than one meaning, where the language is unclear or vague, or where the language can reasonably be construed differently by those who have examined the language in the context of the contract as a whole. *Thoman*, 155 IBLA at 267 (2001) (citing *WH Smith Hotel Services v. Wendy's Int'l, Inc.*, 25 F.3d 422, 427 (7th Cir. 1994) ("Contractual language will be deemed ambiguous only when it is reasonably susceptible to different constructions.")); *Collins v. Harrison-Bode*, 303 F.3d 429, 433 (2d Cir. 2002) ("Contract language is ambiguous if it is 'capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.'").

<sup>49</sup> "Integration clauses, also known as merger clauses, are contract provisions that generally state that the agreement as written constitutes the entire agreement between the parties and supersedes any prior representations." *Jacobson v. Hofgard*, 168 F. Supp. 3d 187, 201 (D.D.C. 2016) (citing 6 Peter Linzer, Corbin on Contracts § 25.8[A] (Joseph M. Perillo ed., 2010) at 68).

<sup>50</sup> *Starter Corp. v. Converse, Inc.*, 170 F.3d 286, 295 (2d Cir. 1999) ("When a contract lacks an express integration clause [courts] must 'determine whether the parties intended their agreement to be an integrated contract by reading the writing in light of the surrounding circumstances.'") (emphasis added); see also, e.g., *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1434 (Fed. Cir. 1996) ("extrinsic evidence is 'especially pertinent ... where ... the writing itself contains no recitals or other evidence testifying to its intended completeness and finality'").

<sup>51</sup> See M-37036 at 6.

<sup>52</sup> The historical interpretation given to a contract by the parties is strong evidence of its meaning. *Tymshare, Inc. v. Covell*, 727 F.2d 1145, 1150 (D.C. Cir. 1983).



**\*\* The minimum annual production and minimum royalty is \$10.00 per acre or a fraction thereof as stated in the attached original lease agreement.<sup>53</sup>**

The first quoted stipulation is ambiguous because it does not precisely state which sections of the 1966 lease are being incorporated. Instead it provides that the “terms and conditions of the production royalties” remain as stated in the original 1966 leases. Those terms and conditions are interspersed throughout the 1966 leases, and are addressed in section 2 (setting the initial rate and minimum royalty payments, among other things), section 5 (setting out the authority and limitations on adjusting royalty rates at renewals), and section 14 (setting out additional limitations on royalty adjustments).

By not specifying which of these sections were incorporated and how, the 2004 lease form is ambiguous. Were only the provisions of section 2 intended to be incorporated? Or were the provisions of sections 5 and 14 also to be included? M-37036 assumed the former. Despite section 5 addressing the adjustment of royalties and other terms during renewals, M-37036 assumed that section 5 of the 1966 leases was not incorporated and had no bearing in analyzing the 2004 leases.<sup>54</sup> It addressed the meaning of section 5 solely as an alternative argument. Yet this assumption is unwarranted because the “terms and conditions” of the production royalties are not fully addressed without sections 5 and 14, so they should be incorporated in some fashion. Precisely how they should be incorporated is also ambiguous given that the royalty and other adjustment provisions of section 5 are intertwined with the renewal provisions of section 1 of the 1966 leases.<sup>55</sup>

In short, the meaning of the 2004 leases is ambiguous.<sup>56</sup> Given this ambiguity, extrinsic evidence beyond the “four corners” of the document may be considered to ascertain the intent of the contracting parties.<sup>57</sup> Examining the decision files of the BLM resolves the ambiguity. The record shows that the BLM renewed the leases in 1989 under the same terms as the 1966 leases, and did so again in 2004.

The circumstances surrounding the 1989 renewal provide important context for understanding the 2004 renewal. The decision file for the 1989 renewal conclusively establishes that the BLM intended to renew the leases in 1989 on the same terms as the original 1966 leases. The BLM initially issued a decision document in September of 1988 that would have renewed the leases on different terms from the original 1966 leases, but the BLM quickly reassessed the matter and

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<sup>53</sup> 2004 Leases at § 14.

<sup>54</sup> See M-37036 at 6 (“Neither of these imported provisions includes the lease renewal provisions of the 1966 leases.”); *id.* at 7 (“\* \* \* there is no conflicting renewal provision [to the one in the 2004 lease form] referenced elsewhere in the 2004 leases”).

<sup>55</sup> The interrelationship is seen directly in the text of section 5, which refers to the “successive” renewals that are provided by section 1 of the 1966 leases.

<sup>56</sup> Given the already described ambiguity that is inherent in the 2004 lease forms, this opinion does not address whether there are other potential ambiguities in those forms.

<sup>57</sup> See, e.g., *Daewoo Eng'g & Constr. Co. v. United States*, 557 F.3d 1332, 1337 (Fed. Cir. 2009) (“Where the meaning of a written instrument is unclear, courts look to extrinsic evidence to resolve the question.”).

formally vacated its decision “because the new lease forms submitted for signature will alter the terms and conditions of the original leases.”<sup>58</sup>

The unusual act of BLM vacating its initial renewal decision was based, in part, on a recommendation memorandum from the Assistant District Manager for Solid Minerals. The memorandum concluded that “[b]ecause of the highly negotiated terms and conditions of these two leases, which contain many references to requirements to be applied during lease renewal periods, I recommend that these leases be renewed under the existing terms and conditions and in their present form, i.e., not on the new lease form.”<sup>59</sup>

A few months after vacating its initial decision, the BLM issued a revised decision renewing the leases under the same terms as the original leases. The BLM’s decision stated unambiguously that it intended to renew the leases with the same terms and conditions as the original leases: “The Forest Service and the Bureau of Land Management have agreed to the renewal of the enclosed Preference Right Leases MNES 1352 and MNES 1353 *under the existing terms and conditions of the original leases*. Enclosed are lease renewal forms transmitted for your signature and return to this office.”<sup>60</sup>

The forms the BLM transmitted for signature were Standard Forms 3520-7 (December 1984), with the original 1966 leases attached and incorporated by reference into the standard forms through two special stipulations included as section 14 of the forms (the same form and special stipulations that would be used in the 2004 renewals). In sum, the 1989 leases, although using Standard Form 3520-7, renewed the 1966 leases without alteration of the operative terms. This fact was acknowledged in M-37036.<sup>61</sup>

When the 2004 renewal was made, there is no statement or other indication in the files that the BLM or the company intended to change any of the terms of the 1989 leases. To the contrary, the record shows that the leases were expected to be renewed on the same terms. Before granting the 2004 lease renewals, the BLM’s Division of Solid Minerals stated by internal memorandum that “[w]e have no objection to Preference Right Leases MNES-1352 and MNES-1353 being renewed for ten years, as stipulated within the lease language.”<sup>62</sup> The BLM official making this recommendation was the same official who recommended renewing the leases in 1989 on the same terms as the 1966 leases. His reference to the “lease language” therefore was informed by his knowledge of the 1989 leases and refers to the terms of the governing 1966 leases. Later, the

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<sup>58</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Decision Vacated” (Oct. 27, 1988).

<sup>59</sup> Memorandum from BLM Assistant District Manager for Solid Minerals, Rolla, Vincent Vogt, to the State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Hardrock Mineral Leases MNES-1352 and MNES-1353” (Oct. 14, 1988).

<sup>60</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Preference Right Leases Renewed, Lease Forms Transmitted for Signature” (Apr. 25, 1989) (emphasis added).

<sup>61</sup> M-37036 at 6, 12.

<sup>62</sup> Memorandum from BLM Assistant Field Manager for Solid Minerals, Rolla, Vincent Vogt, to State Director, Eastern States Office, “Renewal of Preference Right Leases MNES-1352 and MNES-1353” (Apr. 12, 1999).

Forest Service also stated that it had no objection to the renewal, as “[t]he terms, conditions and stipulations have been reviewed, and it has been determined that they are sufficient to protect the resources of the United States.”<sup>63</sup>

The BLM issued its decision granting the lease renewals on November 12, 2003, changing neither the terms of the lease renewals nor the conditions and stipulations, and provided the same standard form for signature as the BLM provided to the lessee in 1989.<sup>64</sup> The BLM did not indicate any change to the contracts in its decision, and the course of dealings between the parties had established the common basis of understanding that the 1966 lease terms were to remain in effect.<sup>65</sup>

While M-37036 attempted to distinguish between the 1989 and 2004 renewals to explain how two identically worded leases could have drastically different meanings, the attempt fails. As noted earlier, M-37036 concludes that the two renewals differ “because the BLM’s discretion was limited in 1989 but not in 2004.”<sup>66</sup> But even if that were true, it does not follow that BLM intended to exercise its discretion by drastically altering the meaning of the same lease forms in 2004 (without mentioning the fact to the lessee or even in its own internal files). As discussed above, there is simply no evidence that either the BLM or the Forest Service intended in the 2004 renewal to deviate from the terms previously in effect in the 1989 renewal (i.e., the terms of the original 1966 leases). The 2004 renewal could, and did, as discussed above, renew the leases under the same terms as in 1989, thereby retaining the renewal terms of the 1966 leases.

In sum, we have found no documents or other evidence that indicate in any way that the 2004 renewals were to be on altered terms or conditions from the 1989 leases. Because the 1989 leases renewed the leases under the same terms and conditions as the original 1966 leases, those terms remain operative in the 2004 renewal and, as discussed below, entitle Twin Metals to a third renewal.<sup>67</sup>

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<sup>63</sup> Decision of the USDA Forest Service, Regional Forester, Randy Moore, to BLM State Director, Eastern States Office, “Renewal of Preference Right Leases MNES 1352 and MNES 1353” (July 18, 2003).

<sup>64</sup> Decision of BLM Chief of Use Authorization, Division of Resources Planning, Use and Protection, to American Copper and Nickel Co., “Additional Requirements to be Met” (Nov. 12, 2003).

<sup>65</sup> The courts have recognized that the parties’ own construction of an ambiguous written instrument is important when determining its meaning. See *DDB Techs., L.L.C. v. MLB Advanced Media, L.P.*, 517 F.3d 1284, 1292 (Fed. Cir. 2008); 11 Richard A. Lord, *Williston on Contracts* § 32:14 (4th ed. 1999) (“[T]he parties’ own practical interpretation of the contract—how they actually acted, thereby giving meaning to their contract during the course of performing it—can be an important aid to the court.”).

<sup>66</sup> M-37036 at 6. The M-Opinion reasons that the 1989 renewal, unlike the 2004 renewal, had to be on the same terms as the original 1966 leases because it served as an extension of time for commencement of production as authorized by the second sentence of section 5 of the 1966 leases. M-37036 at 6. That provision states that a renewal made while the extension is in effect must be “without readjustment except of royalties payable . . .” 1966 Lease, § 5 (second sentence). Accordingly, to comply with the dictates of section 5 of the 1966 Leases, the M-Opinion concludes that the 1989 renewal had to be on the same terms as the 1966 leases. The M-Opinion concludes that the 2004 renewal, in contrast, did not have to be on the same terms because it could not and did not provide an extension. It is important to note that nothing on the face of the 1989 lease form states that it serves as an extension, and there is no evidence in the BLM’s decision files that the lessee sought an extension or that BLM granted one.

<sup>67</sup> Because the parties intended for the renewal terms of the 1966 leases to remain operative, there is no need to address the meaning of the renewal provision used in the 2004 standard form, which provides for a “preferential

## The 1966 Lease Terms Provide for a Third Right of Renewal

The renewal terms of the 1966 leases are not ambiguous in providing Twin Metals with a non-discretionary right to a third renewal, subject to the United States' right to impose reasonable new terms and conditions. Section 1 of the 1966 leases sets out the overall renewal rights, and it provides "a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 C.F.R. § 3221.4(f) and the provisions of this lease."<sup>68</sup> The referenced regulation is similarly unambiguous in providing a right to successive renewals, in relevant part providing lessees with:

[A] right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereof.<sup>69</sup>

Thus, section 1 of the 1966 leases, by its own terms and by reference to section 3221.4(f) of the regulations, establishes that the lessee has a right of renewal for successive ten-year periods, and that the renewals are subject to the provisions of the lease, including provisions regarding subsequent terms and conditions. No other provision of the leases negates this right of renewal. Accordingly, the 1966 leases provide the lessee with a non-discretionary right of renewal for successive ten-year periods, as long as the lessee complies with the lease terms.

M-37036 reached a different conclusion by finding that section 5 of the leases conditioned the lessee's right of renewal upon the lessee having begun production by the end of the primary term. But the text of section 5 does not support this interpretation. Instead, section 5 merely provides terms that govern the extent to which the leases are subject to readjustment at the time of renewal; it does not abrogate the non-discretionary right of renewal provided by section 1. The text of section 5 provides:

Renewal Terms. The Lessor shall have the right to reasonably readjust and fix royalties payable hereunder at the end of the primary term of this lease and thereafter at the end of each successive renewal thereof unless otherwise provided by the law at the time of the

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right in the lessee to renew for successive periods of 10 years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period."

<sup>68</sup> 1966 leases § 1.

<sup>69</sup> 43 C.F.R. § 3221.4(f) (1966). M-37036 suggests that the last sentence of section 3221.4(f) supports its conclusion that production is a condition of renewal. M-37036 at 11–12. The last sentence of section 3221.4(f) states: "An application for renewal of the lease must be filed in a manner similar to that prescribed for extension of a [prospecting] permit in § 3221.3(a)." M-37036 reasons from this language that because section 3221.3(a) required a person seeking an extension of a prospecting permit to show that he has "diligently performed prospecting activities," section 3221.4(f) must analogously require a person who is filing for renewal of a lease to make "a showing of diligence in performing ... production." M-37036 at 11. M-37036 provided no administrative or judicial precedent to support this interpretation, and it fails upon closer examination. Section 3221.4(f) incorporated section 3221.3(a) only to the extent it dealt with the "manner" of filing (§ 3221.3(a) required filing an application in triplicate and with a filing fee within 90 days of the permit expiration); it does not incorporate the substantive criteria under which a prospecting permit extension is adjudicated. It thus provides no support for the conclusion that a production requirement is a condition of renewal.

expiration of any such period, and to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover; provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in the royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of this lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day. The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the Lessee that the lease cannot be successfully operated at a profit or for other reasons, and the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable hereunder if at the end of the primary or renewal period such an extension shall be in effect, but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time. If the Lessee shall be entitled to renewal without readjustment except of royalties payable hereunder, the Secretary of the Interior may in his discretion increase the royalty rate prescribed in subsection (b) of Section 2 up to, but not exceeding (i) 5% during the first ten-year renewal period, (ii) 6% during the second ten-year renewal period, and (iii) 7% during the third ten-year renewal period. The extent of readjustment of royalty, if any to be made under this section shall be determined prior to the commencement of the renewal period.

Rather than conditioning the right of renewal upon production as M-37036 argues, section 5 sets forth the degree to which the BLM may readjust the terms, conditions, and royalty rates during lease renewals, and creates an incentive for early production by limiting BLM's discretion during the first three lease renewals if production has begun.

The first sentence in section 5 has engendered the most commentary, but its meaning is evident from the text. Parsed out, the initial clause grants the BLM two rights:

1. The right to reasonably readjust and fix royalties at the end of the primary term of the lease and at the end of each successive renewal thereof unless otherwise provided by the law at the time of the expiration of any such period; and
2. The right to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover.

These rights are subject to one condition set out in the proviso clause. The proviso provides an incentive to production by restricting the BLM's right to adjust the terms of the leases during the first three renewals if production has begun during the primary term:

That the Lessee has the right to three successive ten-year renewals of the lease with any readjustment in the royalties payable limited to that provided in the 1966 lease and with no readjustment of any of the other terms and conditions of this lease unless at the end of the

primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day.

Under the terms of this proviso, the consequence of a failure to begin production within the primary term is not the loss of the right to renew, as M-37036 asserted, but the loss of the right to a renewal with extremely limited readjustments.

Despite the plain wording of this proviso, M-37036 attempted to argue that the “unless” clause at the end of the sentence “qualifies the very right to renew.”<sup>70</sup> According to that M-Opinion, this “proper” meaning was demonstrated by deleting text from the provision:

[T]he proper meaning of the proviso is clear when the last clause is placed next to the provision it actually qualifies: “[T]he Lessee shall have the right to three successive ten-year renewals of this lease ... unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day.”<sup>71</sup>

Under this interpretation, the final “unless” phrase in the proviso imposes a production requirement that negates *sub silentio* the renewal rights provided in section 1 of the leases.

This interpretation is not correct. Deleting the text from the proviso does not clarify its meaning, it simply (and not surprisingly) changes the meaning. The deleted text works with the “unless” phrase to form one restrictive modifier that states how the right to three successive renewals will be limited if production has begun. In other words, the “unless” phrase does not qualify the right to renewal but is part and parcel of the restrictive modifier describing precisely how the BLM’s readjustment rights were to be limited if production had begun. Deleting the text thus changes, rather than clarifies, the meaning of the proviso.

Moreover, the interpretation suggested by M-37036 does not account for the fact that the entire sentence is a proviso to the first clause. The first clause describes the BLM’s readjustment authority at renewal and evinces no intention to circumscribe the renewal rights set out in section 1 of the leases or create a production condition on renewal. The proviso is properly interpreted as qualifying this clause,<sup>72</sup> but the interpretation suggested by M-37036 elevates the proviso into a separate, standalone provision that creates a production condition, which negates the section 1 renewal rights. Such an interpretation is not warranted by the text or placement of the proviso.

The remaining two sentences of section 5 reinforce that the right to renew is not impacted by section 5, but merely the amount of readjustments that can be made with a renewal. The second sentence has three clauses. The first clause gives the Secretary of the Interior broad discretion to grant extensions of time for commencement of production in the interest of conservation, upon a showing that the lease cannot be operated for a profit, or “for other reasons.” The second clause makes clear that a consequence of granting an extension is that the lessee will continue to enjoy the

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<sup>70</sup> M-37036 at 9.

<sup>71</sup> *Id.* (alteration and ellipsis in original).

<sup>72</sup> See, e.g., *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (“[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.”).

favorable limitations on lease readjustments if renewal occurs while the extension is in effect: “the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable.”

The third clause provides that “the Lessee shall not be entitled to subsequent *such* renewals unless it shall have begun production within the extended time” (emphasis added). The phrase “such renewals” refers back to the preceding clause, which references renewals without readjustment of the terms and conditions.<sup>73</sup> In other words, the second sentence of section 5 takes as a given the right to renew the lease; it is only the terms and conditions of a renewal that are affected by the authorized extension of time for commencement of production.

Finally, the third sentence of section 5 is straightforward. It provides a schedule for the rate readjustments when the lessee is entitled to renewal without readjustment except of royalties. It limits rate readjustments to:

- 5% during the first ten-year renewal period;
- 6% during the second ten-year renewal period; and
- 7% during the third ten-year renewal period.

As reflected by this analysis of section 5, its provisions set out the right of BLM to readjust royalty rates and lease terms and conditions at the time of renewal, but creates a production incentive for the lessee by providing BLM with only limited readjustment rights if the lessee begins production by the end of the primary term (or by the end of an extension if one is granted). The commencement of production is thus a condition precedent to limiting BLM’s readjustment rights, but it is not a condition precedent to the right to a renewal.

M-37036 attempts to support its interpretation that section 5 imposes a production condition on renewal with a number of subsidiary arguments. The M-Opinion argues, for example, that its position is longstanding and supported by a 1986 memorandum from an Associate Solicitor.<sup>74</sup> While that 1986 Opinion answered the narrow renewal question before it correctly, finding that BLM could renew the leases in the absence of production, its reasoning is faulty and was not even relied upon in M-37036. More specifically, the 1986 Opinion improperly focused only on the second sentence of section 5, without reference to section 1 of the lease or even the other sentences of section 5. It summarily concluded that the final clause of the second sentence (which states that “the lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time”) precludes *all* subsequent renewals. As discussed above, that is an

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<sup>73</sup> M-37036 asserts that the last clause of the second sentence supports its interpretation, apparently viewing the phrase “shall not be entitled to subsequent such renewals” as effectively meaning “shall not be entitled to any renewals.” The M-Opinion’s construction does not square with the actual wording of the clause.

<sup>74</sup> M-37036 at 12 (citing Memorandum from Associate Solicitor, Energy and Resources, signed by Kenneth G. Lee, Assistant Solicitor, Branch of Eastern Resources, to Deputy State Director, Mineral Resources, Eastern States Office, BLM, “Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Incorporated for Leases ES 01352 and ES 01353” (Apr. 2, 1986) (1986 Opinion)).

improper reading that ignores what the clause is qualifying and gives no meaning to the phrase “such renewals,” instead transforming it into “all renewals.” Moreover, the BLM appropriately did not follow the advice given in the 1986 Opinion when it renewed the leases for a second time in 2004. The 1986 Opinion thus provides no support for concluding that production is a precondition to the right to renew.

M-37036 also argues that the lease requirement to pay minimum royalties in lieu of production does not negate the precondition of production for mandatory renewals.<sup>75</sup> While it is certainly true that BLM could impose both requirements, the very case cited in the M-Opinion shows that when BLM intends to impose a production requirement, it will do so explicitly. In *General Chemicals (Soda Ash) Partners*,<sup>76</sup> the BLM had imposed a minimum royalty payment in a sodium lease but also included an express production precondition for renewal, stating that “[t]he authorized officer will reject an application for renewal of this lease if, at the end of the lease’s current term, sodium is not being produced.”<sup>77</sup> *General Chemicals* underscores that the BLM will explicitly include a production precondition when it so intends.<sup>78</sup> There is no such provision in the leases at issue.

Moreover, the historical record of the 1966 lease implementation shows that production was not made a condition of renewal. For example, as stated in the background section above, the BLM denied INCO’s requested waiver of minimum royalty payments precisely because there was no production requirement in the lease:

The provision for minimum royalty in lieu of production requirements was a lease term arrived at through pre-lease negotiations between the Bureau and INCO. The intention of the minimum royalty is to spur development of the resource and, in effect, is the only diligence requirement contained in the subject leases. Waiver of minimum royalty removes all incentive for the timely development of the leases.<sup>79</sup>

Later, when processing the 1989 renewal application, the BLM wrote in an internal memorandum that it would be “inappropriate” to impose a production requirement upon the lessee in the lease renewal, especially “when no other hardrock leases in our District contain such a requirement.”<sup>80</sup>

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<sup>75</sup> M-37036 at 12–13.

<sup>76</sup> 176 IBLA 1 (2008).

<sup>77</sup> *Id.* at 5.

<sup>78</sup> M-37036 suggests that *General Chemicals* supports its position because the Board in that case found that the payment of minimum royalties did not satisfy the lease’s production requirement. M37036 at 13 (citing *General Chemicals*, 176 IBLA. at 9.). Given that the lease in *General Chemicals* included an express production requirement, while the leases at issue do not, the case is clearly distinguishable and actually supports the conclusion reached here that no production requirement is imposed by the leases.

<sup>79</sup> Memorandum from BLM Associate District Manager, Milwaukee to the State Director, Eastern States Office, “Recommendation Regarding an Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Inc.” (Aug. 28, 1985), at 2.

<sup>80</sup> Memorandum from BLM Assistant District Manager for Solid Minerals, Rolla, Vincent Vogt, to the State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Hardrock Mineral Leases MNES-1352 and MNES-1353” (Oct. 14, 1988) at 2.



Finally, M-37036 makes in essence a public policy argument that a lease without a production precondition would allow for speculative holding of mineral rights in contravention of Congress's intent to encourage mineral development and "provide a fair return to the American taxpayer."<sup>81</sup> But the leases here do provide incentives for production by imposing minimum royalty payments and authorizing greater revisions of the royalty rates and other terms when there has been no production. The American public has received over \$1.4 million dollars in royalty payments, and Twin Metals has asserted that it has spent over \$400 million in exploration activity. The public policy concern is unfounded in this instance.

In summary, neither the terms of the 1966 leases, the course of conduct of the parties over the last 50 years, nor public policy suggest that a production precondition is required.

### **Conclusion**

M-37036 improperly interpreted the leases at issue and is withdrawn. As discussed above, the terms of the original leases issued to Twin Metals' predecessor-in-interest in 1966 remain operative in the 2004 lease renewal. The original 1966 leases provide Twin Metals with a non-discretionary right to a third renewal, subject to the United States' right to impose reasonable terms and conditions as authorized by the 1966 leases. Accordingly, the BLM does not have the discretion to deny the renewal application.



Daniel H. Jorjani

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<sup>81</sup> M-37036 at 11.

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

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**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

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**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 22 2017 13:46:27 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
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**Attachments:** M-37049 Reversal of M37036 Twin Metals Minnesota Application to Renew Preference Right Leases 122217\_Executed.pdf

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**To:** Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>



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**Sent:** Fri Dec 22 2017 13:49:01 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**CC:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Gary Lawkowski <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
**Subject:** Re:

And big thanks to you for all of your work on this, Jack!

I've notified Sean Duffy that the opinion was signed and that it has been posted on the webpage. I told him he should move ahead with filing the notice with the court.

On Fri, Dec 22, 2017 at 3:46 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
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**Sent:** Fri Dec 22 2017 13:49:39 GMT-0700 (MST)  
**To:**  
**CC:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Re: Fwd:

Briana:  
Congratulations. Have a good holiday.  
Richard

Sent from my iPad

On Dec 22, 2017, at 3:46 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

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Date: Fri, Dec 22, 2017 at 3:40 PM

Subject:

To: Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>



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**Sent:** Fri Dec 22 2017 13:52:33 GMT-0700 (MST)  
**To:** Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Fwd:

Thanks Richard. You too.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
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Richard

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Subject:

To: Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>



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# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO

DEC 22 2017

M-37049

## Memorandum

To: Director, Bureau of Land Management

From: Principal Deputy Solicitor Exercising the Authority of the Solicitor Pursuant to Secretarial Order 3345

Subject: Reversal of M-37036, "Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)"

On October 21, 2012, Twin Metals Minnesota (Twin Metals) filed an application with the Bureau of Land Management (BLM) to renew hardrock mineral leases MNES-01352 and MNES-01353 located within the Superior National Forest in Northeastern Minnesota. On March 8, 2016, the former Solicitor issued an M-Opinion entitled, "Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)" (M-37036), concluding that the BLM had discretion to either grant or deny Twin Metals' pending application to renew the two hardrock mineral leases. Twin Metals filed suit on September 12, 2016, challenging the M-Opinion.

After the United States Department of Agriculture Forest Service (Forest Service) withheld its consent to renew the leases, the BLM cancelled the leases in December 2016. In response to the decision not to renew their leases, Twin Metals asked for reconsideration of M-37036. After further review of the relevant documents and underlying legal framework, we believe that M-37036 erred in concluding that BLM has discretion to grant or deny Twin Metals' lease renewal application. Accordingly, this Memorandum withdraws and replaces M-37036.

For the reasons set forth below, the terms of the original leases issued to Twin Metals' predecessor-in-interest in 1966 remain the operative provisions governing lease renewal. The original 1966 leases provide Twin Metals with a non-discretionary right to a third renewal, subject to readjusted terms and conditions as allowed by the 1966 leases. Accordingly, while the United States maintains discretion to impose reasonable new terms and conditions in the lease renewal agreements, the BLM does not have the discretion to deny the renewal application.

## **Background**

### **Statutory Authority for Issuance of the Leases**

The leases are located in northern Minnesota on acquired Weeks Act<sup>1</sup> lands, as well as lands reserved from the public domain, that are managed as part of the National Forest System by the Forest Service. The Secretary's authority, as delegated to the BLM, for mineral disposition on the acquired lands is found in section 402 of Reorganization Plan No. 3 of 1946,<sup>2</sup> and 16 U.S.C. § 520, which governs mineral disposition on Weeks Act lands. The Secretary's authority, as delegated to the BLM, for mineral disposition on reserved National Forest System lands in Minnesota is 16 U.S.C. § 508b. Under these provisions, leasing for hardrock mineral development is allowed only if the Secretary of Agriculture has consented to the issuance of the lease.<sup>3</sup>

### **Negotiation and Issuance of the 1966 Leases**

The history of the original lease negotiations and the subsequent renewals is an important factor in determining the intent of the parties with respect to the right of renewal. The history began in 1952 when Twin Metals' predecessor-in-interest, the International Nickel Company, Inc. (INCO), followed successful prospecting activity by approaching the Department of the Interior (Department) regarding applying for hardrock mineral leases.

The two parties began negotiating potential terms in 1953, and INCO originally sought a 50-year lease from the Department.<sup>4</sup> The lease negotiations did not end for over ten years, in part because the parties disagreed on three major issues:

Term – INCO sought a 50-year term to increase certainty for its investors while the BLM wanted a maximum 20-year primary term;<sup>5</sup>

Royalty rates – the Department wanted higher royalty rates than INCO was willing to agree to pay;<sup>6</sup> and

Production assurances – the BLM sought assurance that INCO would begin production during the lease term.<sup>7</sup>

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<sup>1</sup> Pub. L. No. 61-436, § 6, 36 Stat. 961, 962 (1911) (codified as amended at 16 U.S.C. § 515).

<sup>2</sup> 60 Stat. 1097, 1099-1100, Section 402 (May 16, 1946).

<sup>3</sup> See *id.*; 16 U.S.C. § 508(b).

<sup>4</sup> Memorandum from United States Geological Survey (USGS) Chief, Conservation Division to file, "Nickel Leasing" (Aug. 13, 1953).

<sup>5</sup> Memorandum from P.W. Guild, BLM Chief, Branch of Ferrous Metals to file, "Meeting in Congressman Blatnik's office re Cu-Ni deposits in Minnesota" (July 9, 1965).

<sup>6</sup> Memorandum from USGS Chief, Conservation Division to USGS Associate Director, "Proposed preference right lease to International Nickel Company, Inc." (Oct. 29, 1965).

<sup>7</sup> Memorandum from BLM Director to DOI Assistant Secretary, Mineral Resources, "Proposed Preference Right Leases to International Nickel Company, Inc." (Oct. 5, 1965).



After several years of exchanging drafts of potential lease terms, the parties reached a compromise agreement on these issues:

- INCO agreed to accept the 20-year primary term;
- The BLM agreed to accept a lower yet escalating minimum royalty rate; and
- The BLM received some production assurances in the form of adjustable royalty rates on future production that would fluctuate depending on how soon the lessee began producing.<sup>8</sup>

As a result of these and other compromises, the original MNES-01352 and MNES-01353 leases awarded to INCO on June 1, 1966, were unique, borrowing terms from, but not utilizing, the BLM's Standard Lease Form in place at the time.

The royalty and renewal provisions were particularly distinctive. The first section of the leases provides the lessee with the exclusive right to mine on the leasehold for a primary term of 20 years and the right to renewals at 10-year intervals after the primary term:

Rights of Lessee. In consideration of the rents and royalties to be paid and conditions and covenants to be observed as herein set forth the Lessor grants to the Lessee . . . the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals . . . in, upon, or under [the described lands] . . . together with the right to construct and maintain thereon such structures and other facilities as may be necessary or convenient for the mining, preparation, and removal of said minerals, for a period of twenty (20) years *with a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 CFR § 3221.4(f) and the provisions of this lease.*<sup>9</sup>

The regulation referenced in the renewal clause provides in pertinent part that the “lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe.”<sup>10</sup>

Section 2 of the leases then sets forth most of the lessee's obligations, covering rental and royalty payments, bonding, inspection, payment of taxes, and non-discrimination provisions, among other things. Of importance for Twin Metals to hold the leases without production, section 2(c) provides for minimum royalty payments in lieu of production. Those provisions state that, beginning after the tenth year of the primary term, the lessee is required to mine a quantity of minerals such that the royalties would be equal to \$5 per annum per acre for the primary term and \$10 per annum per

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<sup>8</sup> See Memorandum from USGS Assistant Chief, Conservation Division, to file, “Phone call from Julian Feiss re meeting with International Nickel” (Aug. 18, 1965); Memorandum from USGS Director to the Secretary of the Interior, “Congressman John A. Blatnik may telephone the Secretary” (Jan. 10, 1966) (discussing the parties' differing positions on royalty rates and recommending a “performance clause” be added as a “reentry” clause for royalty adjustment that might be introduced permitting reevaluation and lowering of the royalty rates if justified after some operating experience”).

<sup>9</sup> Section 1(a) of Lease (emphasis added).

<sup>10</sup> 43 C.F.R. § 3221.4(f) (1966).

acre during each renewal or, in lieu of that production, pay royalties equal to the minimum royalty.<sup>11</sup> Section 2(c) also allows the lessor in its discretion to waive, reduce or suspend the minimum royalty payment for reasonable periods of time in the interest of conservation.<sup>12</sup> Pursuant to this section, INCO and its successors have paid over \$1.4 million dollars in royalties to the government.

Section 5, entitled “Renewal Terms,” is also unique by describing in detail BLM’s rights to readjust royalty rates and other terms upon renewal. As more fully discussed in the analysis section below, section 5 creates a production incentive for the lessee by providing BLM with only limited readjustment rights if the lessee was producing by the end of the initial 20-year term. On the other hand, if the lessee was not producing before the initial term ended (and if BLM had not extended the period for commencement of production), then BLM would have the right, starting with the first renewal, to readjust terms and conditions without these limitations.

Finally, section 14, entitled “Royalty Adjustment,” is unique by providing another production incentive. It requires lowering the royalty rate in the second ten years of the primary lease term and in the first three renewals if the lessee sinks a shaft or otherwise commences commercial development within five years of obtaining all the necessary permits and authorizations.<sup>13</sup>

#### **Activity during the Primary Term of the 1966 Leases**

INCO fulfilled the royalty rate reduction provisions of section 14 by sinking a 1,100 foot mine shaft on lands leased under MNES-01352 in 1967 to obtain bulk sampling. But no production occurred under the leases during the 20-year primary term. Under the terms of section 2(c) of the 1966 leases, INCO’s minimum royalty payments became due beginning with the 1976-1977 lease year. The BLM granted INCO’s requests for waivers of the minimum royalty payments for a five-year period, from June 1, 1976, through May 31, 1981, because the State of Minnesota was conducting environmental studies of the proposed mining operations during that time period, which prevented INCO from proceeding with development of the leases.<sup>14</sup> INCO again requested a waiver of minimum royalty payments for the five-year period between June 1, 1981, and May 31, 1986, citing copper and nickel prices too low to allow for development. The BLM denied this second request, reasoning in part that the royalty payment was the only diligence requirement in the leases:

The provision for minimum royalty in lieu of production requirements was a lease term arrived at through pre-lease negotiations between the Bureau and INCO. The intention of the minimum royalty is to spur development of the resource and, in effect, is the only diligence requirement contained in the subject leases. Waiver of minimum royalty removes all incentive for the timely development of the leases.<sup>15</sup>

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<sup>11</sup> See § 2(c) of the 1966 leases.

<sup>12</sup> *Id.*

<sup>13</sup> Section 14 of the 1966 leases.

<sup>14</sup> Memorandum from BLM Associate District Manager, Milwaukee, to the State Director, Eastern States Office, “Recommendation Regarding an Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Inc.” (Aug. 28, 1985), at 2.

<sup>15</sup> *Id.* at 3.

Beginning in 1985, after the BLM denied the waiver request, INCO started submitting minimum royalty payments as required by the leases.

### **The 1989 Lease Renewals**

INCO timely filed its first lease renewal application on May 14, 1986.<sup>16</sup> After receiving legal advice from the Office of the Solicitor confirming that the lease could be renewed despite the lack of production,<sup>17</sup> the BLM requested the consent of the Forest Service, and the Forest Service agreed to the renewals, finding the terms and conditions of the original leases to be “adequate to prevent or mitigate unacceptable impacts and that no additional conditions need to be added prior to their renewal provided that none of the terms and conditions related to [Forest Service surface] authority are diminished in any manner.”<sup>18</sup>

After then receiving the recommendations of the BLM Assistant District Manager in Milwaukee, the BLM issued a decision renewing the leases on September 12, 1988, and enclosed a new lease form for INCO’s signature.<sup>19</sup> The new lease would have altered several terms and conditions of the leases, including raising the base royalty rate to 5% and lowering the minimum royalty payment to \$3 per acre per year.

Before the new lease was signed, the BLM took the unusual step of withdrawing the leasing decision “because the new lease forms submitted for signature will alter the terms and conditions of the original leases.”<sup>20</sup> The withdrawal of the decision was made after an internal reassessment of the renewal form against the original lease terms. An internal BLM memorandum explained that the minimum royalty rate should not be lowered to \$3 per acre as the then-current regulations

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<sup>16</sup> The regulations at 43 C.F.R. § 3522.1-1 (1985) state that renewal applications “must be filed in the appropriate land office within 90 days prior to the expiration of the lease term.” The “within 90 days” language in this regulatory provision allows lease renewal applications to be filed at any time before the expiration of the lease term. The lessee filed an application for extension of the term of the leases on May 14, 1986—30 days before the end of the primary twenty-year term on June 14, 1986, which was “within 90 days” of the lease expiration. Consequently, the renewal application was timely filed.

<sup>17</sup> Memorandum from Associate Solicitor, Energy and Resources, to Deputy State Director, Mineral Resources, Eastern States Office, BLM, “Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Incorporated for Leases ES 01352 and ES 01353” (Apr. 2, 1986).

<sup>18</sup> Decision of United States Department of Agriculture (USDA), Forest Service, Superior National Forest Supervisor, Clay Beal, “Finding of Categorical Exclusion, Conditions of Extending Bureau of Land Management Leases” (Feb. 6, 1987). The Regional Forester subsequently affirmed the agency’s consent to the 1989 lease renewals. Decision of United States Department of Agriculture (USDA), Forest Service, Eastern Region, Regional Forester, Floyd J. Marita, “BLM Preference Right Leases, ES 01352 and ES 01353 Inco Alloys International, Inc. – (Superior NF – MN) (June 19, 1987).

<sup>19</sup> Memorandum from BLM Assistant District Manager for Energy and Minerals, Milwaukee to State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Leases ES-1352 and ES-1353” (July 9, 1986); Decision by Bureau of Land Management Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Preference Right Leases Renewed, Lease Forms Transmitted for Signature” (Sept. 12, 1988).

<sup>20</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Decision Vacated” (Oct. 27, 1988).

directed, but should be set at the \$10 per acre rate outlined in the 1966 leases, as “[t]his high minimum royalty payment was agreed to through intensive negotiations and is intended to serve as the ‘production incentive’ or ‘diligent development’ provision in the leases, and should not be changed.”<sup>21</sup> Likewise, with such a production incentive, the memorandum stated that it would be “inappropriate” to impose an additional production requirement on the lessee in the lease renewal, especially “when no other hardrock leases in our District contain such a requirement.”<sup>22</sup> The memorandum concludes, “Because of the highly negotiated terms and conditions of these two leases, which contain many references to requirements to be applied during lease renewal periods, I recommend that these leases be renewed under the existing terms and conditions and in their present form, i.e., not on the new lease form.”<sup>23</sup> Based on this recommendation, the BLM withdrew its initial leasing decision as noted above.

A few months later, the BLM granted INCO’s renewal application in a new decision. This decision expressly stated that the renewal was on the same terms and conditions of the original leases: “The Forest Service and the Bureau of Land Management have agreed to the renewal of the enclosed Preference Right Leases MNES 1352 and MNES 1353 under the existing terms and conditions of the original lease. Enclosed are lease renewal forms transmitted for your signature and return to this office.”<sup>24</sup>

The forms the BLM transmitted for signature were the Standard Form 3520-7 (December 1984), with some terms written in and other terms referencing the 1966 leases, which were attached in full to the standard forms. On the standard forms, the BLM typed in single and double asterisks next to section 2 (a) and (b), and included text later in section 14, entitled “Special Stipulations,” that corresponded to the single and double asterisks. These provisions stated that the “terms and conditions of the production royalties remains [sic] as stated in the attached original lease agreement,” and that “[t]he minimum annual production and minimum royalty is \$10.00 per acre or a fraction thereof as stated in the attached original lease agreement.”<sup>25</sup> The forms also contain a standard renewal provision stating that the lease is effective “for a period of ten years . . . with preferential right in the lessee to renew for successive periods of ten years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period.”<sup>26</sup>

During this time period, INCO filed to assign its interests in the leases to American Copper and Nickel Company, Inc. (“American Copper”) in May 1988. The BLM granted the assignments, effective January 1, 1991. Although exploration work continued, neither INCO nor American Copper began production on the leases during the first renewal period.

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<sup>21</sup> Memorandum from BLM Assistant District Manager for Solid Minerals, Rolla, Vincent Vogt, to the State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Hardrock Mineral Leases MNES-1352 and MNES-1353” (Oct. 14, 1988) at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Preference Right Leases Renewed, Lease Forms Transmitted for Signature” (Apr. 25, 1989).

<sup>25</sup> 1989 lease renewal forms, at 2–3.

<sup>26</sup> *Id.* at 1.

## **The 2004 Lease Renewals**

American Copper timely applied for a second renewal of the leases on March 15, 1999.<sup>27</sup> The Forest Service consented to the renewals, finding the terms and conditions to be sufficient.<sup>28</sup> The BLM issued its decision granting the lease renewals on November 12, 2003, and directed American Copper to sign the enclosed Preference Right Lease forms and return them to the BLM office within 30 days.<sup>29</sup> As lease forms, the BLM again provided Standard Form 3520-7 (December 1984), with identical typed-in provisions to those of the 1989 leases, and again attached the 1966 leases in full.<sup>30</sup> The leases were renewed with an effective date of January 1, 2004.

On April 7, 2004, American Copper filed to assign its interests in the leases to Beaver Bay Joint Venture. The BLM approved the assignment on March 30, 2005, to be effective April 1, 2005. Although exploration work continued, neither American Copper nor Beaver Bay Joint Venture began production on the leases during the second renewal period.

## **The 2012 Renewal Application and Issuance of M-37036**

On October 21, 2012, Beaver Bay Joint Venture timely filed for a third renewal of the leases.<sup>31</sup> Through BLM-approved assignments and transfers, Franconia Minerals (US) LLC (Franconia) later became the current leaseholder of MNES-1352 and MNES-1353. Franconia is a wholly-owned subsidiary of Twin Metals.

In processing the 2012 application for renewal, the BLM identified the need for a legal opinion to determine whether it had discretion to grant or deny the lease renewal. The Solicitor issued M-Opinion 37036 on March 8, 2016, in response to the request.<sup>32</sup> In M-37036, the Solicitor disagreed with Twin Metals' assertion that the original lease terms governed and provided a perpetual right to renew the leases every ten years. The M-Opinion found that the more recent 2004 lease terms governed renewal, and while the "2004 lease terms give the lessee preference over other potential lessees to lease the lands in question, they do not entitle the lessee to non-

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<sup>27</sup> The lessee applied for a second renewal on March 15, 1999, which was 109 days before the end of the first lease renewal on July 1, 1999. The 1999 regulations instruct lessees to "[f]ile an application [for renewal] at least 90 days before the lease term expires." 43 C.F.R. § 3511.27 (1999). Consequently, the 1999 renewal applications were timely filed.

<sup>28</sup> Decision of the USDA Forest Service, Regional Forester, Randy Moore, to BLM State Director, Eastern States Office, "Renewal of Preference Right Leases MNES 1352 and MNES 1353" (July 18, 2003).

<sup>29</sup> Decision of BLM Chief of Use Authorization, Division of Resources Planning, Use and Protection, to American Copper and Nickel Co., "Additional Requirements to be Met" (Nov. 12, 2003).

<sup>30</sup> See 2004 lease renewal forms, at 2–3.

<sup>31</sup> The 2012 renewal application was submitted 438 days before the end of the second renewal on January 1, 2014. The filing requirements in the current regulations are the same as those in the 1999 regulations. *Id.* (2014). Consequently, the 2012 application was timely filed.

<sup>32</sup> *Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)*, M-37036 (Mar. 8, 2016).

discretionary renewal of the leases.”<sup>33</sup> The M-Opinion also concluded that even if the terms of the 1966 leases governed, they did not provide a non-discretionary right to renewal. Instead, M-37036 found that “[u]nder the original 1966 lease terms . . . the lessee was required to commence production within the twenty-year primary term to qualify for three renewals of right.”<sup>34</sup> Because no production has occurred, the M-Opinion concluded that no right to renewal existed: “Twin Metals Minnesota does not have a non-discretionary right to renewal, but rather the BLM has discretion to grant or deny the pending renewal application.”

After receiving the M-Opinion, the BLM requested the Forest Service’s consent determination on the lease renewals.<sup>35</sup> After taking public comment on the question, the Forest Service submitted a letter to the BLM Director on December 14, 2016, stating it did not consent to renewal of the leases.<sup>36</sup> As a result of the Forest Service’s denial of consent, the BLM issued a decision denying renewal of the leases on December 15, 2016.<sup>37</sup>

### **Analysis**

Twin Metals has consistently asserted that the renewal provisions of its 1966 leases govern and provide a right of renewal every ten years as long as it complies with the terms of the leases. In contrast, M-37036 concluded that Twin Metal’s renewal rights were governed by the terms of the 2004 lease forms, and that those terms were unambiguous and provided Twin Metals only with the right to be considered for a renewal at the discretion of the Forest Service and the BLM. In addition, M-37036 asserted that even if the terms of the 1966 leases governed, Twin Metals still would not be entitled to a non-discretionary right of renewal because it did not begin production within its extended primary term.

As discussed below, Twin Metals is entitled to a third renewal. First, the renewal terms of the 2004 lease form do not govern. The form is ambiguous, and the intent of the parties to keep operative the terms of the 1966 leases becomes clear once the BLM’s decision files are examined.<sup>38</sup> M-37036 also misconstrues the terms of the 1966 leases. They do in fact provide for a third, non-discretionary right to renewal without regard to whether production has begun. Accordingly, Twin Metals has the right to renewed leases, subject to the imposition of reasonable new terms and conditions as allowed by the 1966 leases.

In the sections below, we first discuss why the 1966 renewal terms govern, and then discuss the meaning of those terms.

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<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> Letter from Karen Mouritsen, State Director, BLM Eastern States Office, to Kathleen Atkinson, Regional Forester, Eastern Region, Forest Service (June 3, 2016).

<sup>36</sup> Letter from Thomas L. Tidwell, Chief, Forest Service, to Neil Kornze, Director, BLM (Dec. 14, 2016).

<sup>37</sup> Decision by BLM State Director, Eastern States Office, Karen Mouritsen, to Twin Metals Minnesota Chief Operating Office, Ian Duckworth, “Lease Renewal Application Rejected” (Dec. 15, 2016).

<sup>38</sup> M-37036 did not examine this extrinsic evidence because of its underlying premise that the 2004 lease forms were unambiguous.

## **Twin Metals' Renewal Application is Governed by the Renewal Terms of the 1966 Leases**

M-37036 concluded that the renewal rights of Twin Metals are governed by the terms of BLM standard form 3520-7 (Dec. 1984) rather than the terms of the 1966 leases. To reach this conclusion, M-37036 found that the 2004 lease forms “are each complete, integrated documents that contain all necessary lease terms and are duly signed by the lessee and lessor.”<sup>39</sup> The M-Opinion states that the lease forms only incorporate two portions of the 1966 leases through section 14 of the 2004 lease form, and that “[n]either of these imported provisions includes the lease renewal provisions of the 1966 leases.”<sup>40</sup> Consequently, according to M-37036, since the time that the 2004 lease form was executed, “the renewal provisions of the 1966 leases have no longer applied and the only renewal terms are those described in the 2004 leases . . . .”<sup>41</sup>

M-37036 treats the 1989 lease renewal, which was identical to the one issued in 2004, very differently. The M-Opinion finds that “the 1989 renewal was effectively a ten-year extension of the 1966 lease terms . . . .”<sup>42</sup> In other words, M-37036 recognized that the 1989 form incorporated all the provisions of the 1966 leases, including the renewal terms, while opining that the identically worded form in 2004 did not.<sup>43</sup>

M-37036 misapprehends the meaning and effect of the 2004 lease forms. As discussed below, the 2004 lease terms are ambiguous as to the extent to which the provisions of the 1966 leases are incorporated. Properly analyzed, examining both the text of the leases and the intent of the parties as expressed during negotiations, the renewal provisions found in the 1966 leases remain operative, and provide the non-discretionary right to a third renewal.

The normal principles of contract construction lead to the foregoing conclusion.<sup>44</sup> When construing a contract, we must first examine the plain meaning of its express terms.<sup>45</sup> The task is to determine the intent of the parties at the time they contracted, as evidenced by the contract itself.<sup>46</sup> If the terms are clear and unambiguous, the provisions must be given their plain meaning

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<sup>39</sup> M-37036 at 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* M-37036 then opined that the renewal language used in the 2004 lease form made the renewal discretionary, stating that the “Department has consistently interpreted this provision as not entitling the lessee to an automatic right of renewal . . . .” *Id.* at 5. We do not address in this replacement opinion the meaning of the 2004 lease renewal language because, as explained later, the parties intended the renewal terms of the 1966 leases to remain operative.

<sup>42</sup> *Id.* at 6.

<sup>43</sup> As discussed below, *see* footnote 62 and accompanying text, M-37036 attempts to distinguish the two situations by finding that the 1989 renewal differs “because the BLM’s discretion was limited in 1989 but not in 2004.” *Id.* at 6. We discuss below that the discretion did not vary between the two renewals and, even if BLM had differing discretion, it intended the 2004 renewal to maintain the terms of the original 1966 leases, just as the 1989 renewal had done.

<sup>44</sup> The normal rules of contract construction govern the interpretation of agreements between the government and a private party. *Thoman v. Bureau of Land Mgmt. (on recon.)*, 155 IBLA 266, 267 (2001) (citing *Anthony v. United States*, 987 F.2d 670, 673 (10th Cir. 1993)); *Press Machinery Corp. v. Smith R.P.M. Corp.*, 727 F.2d 781, 784 (8th Cir. 1984)).

<sup>45</sup> *Textron Def. Sys. v. Widnall*, 143 F.3d 1465, 1468 (Fed. Cir. 1998).

<sup>46</sup> *Greco v. Dep’t of Army*, 852 F.2d 558, 560 (Fed. Cir. 1988).

and extrinsic evidence is inadmissible to interpret them.<sup>47</sup> However, where contract terms are unclear or ambiguous, an examination of extrinsic evidence is appropriate to properly interpret the contract in accordance with the parties' intent.<sup>48</sup>

Applying these principles, it is evident that the 2004 leases are ambiguous and extrinsic evidence must be examined to determine the intent of the parties. Rather than being "complete, integrated documents," the leases attach without full explanation the entirety of the 1966 leases and do not include an integration clause that states that the 2004 lease forms are the complete expression of the parties' agreement.<sup>49</sup> These facts alone warrant an examination of extrinsic evidence to determine the intent of the parties.<sup>50</sup>

The lack of an integration clause in the 2004 leases is particularly important given the parties' interpretation of the identically worded 1989 leases that the Department has consistently acknowledged as incorporating the 1966 lease terms in their entirety.<sup>51</sup> The use of the identical form in 2004 without explanation and without an integration clause at the very least creates an ambiguity as to whether the parties intended the 2004 leases to be treated the same as the 1989 leases or completely differently as interpreted by M-37036.<sup>52</sup>

Even absent that ambiguity, the text of section 14 in the 2004 leases is ambiguous. Section 14 contains two special stipulations that incorporate the 1966 leases:

Sec. 14. Special Stipulations --

\* The terms and conditions of the production royalties remains [sic] as stated in the attached original lease agreement.

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<sup>47</sup> *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).

<sup>48</sup> *BP Amoco Chem. Co. v. Flint Hills Res., LLC*, 600 F. Supp. 2d 976, 981 (N.D. Ill. 2009); see also 5-24 Corbin on Contracts § 24.7. Terms may be ambiguous where the language is susceptible to more than one meaning, where the language is unclear or vague, or where the language can reasonably be construed differently by those who have examined the language in the context of the contract as a whole. *Thoman*, 155 IBLA at 267 (2001) (citing *WH Smith Hotel Services v. Wendy's Int'l, Inc.*, 25 F.3d 422, 427 (7th Cir. 1994) ("Contractual language will be deemed ambiguous only when it is reasonably susceptible to different constructions.")); *Collins v. Harrison-Bode*, 303 F.3d 429, 433 (2d Cir. 2002) ("Contract language is ambiguous if it is 'capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.'").

<sup>49</sup> "Integration clauses, also known as merger clauses, are contract provisions that generally state that the agreement as written constitutes the entire agreement between the parties and supersedes any prior representations." *Jacobson v. Hofgard*, 168 F. Supp. 3d 187, 201 (D.D.C. 2016) (citing 6 Peter Linzer, Corbin on Contracts § 25.8[A] (Joseph M. Perillo ed., 2010) at 68).

<sup>50</sup> *Starter Corp. v. Converse, Inc.*, 170 F.3d 286, 295 (2d Cir. 1999) ("When a contract lacks an express integration clause [courts] must 'determine whether the parties intended their agreement to be an integrated contract by reading the writing in light of the surrounding circumstances.'") (emphasis added); see also, e.g., *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1434 (Fed. Cir. 1996) ("extrinsic evidence is 'especially pertinent ... where ... the writing itself contains no recitals or other evidence testifying to its intended completeness and finality'").

<sup>51</sup> See M-37036 at 6.

<sup>52</sup> The historical interpretation given to a contract by the parties is strong evidence of its meaning. *Tymshare, Inc. v. Covell*, 727 F.2d 1145, 1150 (D.C. Cir. 1983).



**\*\* The minimum annual production and minimum royalty is \$10.00 per acre or a fraction thereof as stated in the attached original lease agreement.<sup>53</sup>**

The first quoted stipulation is ambiguous because it does not precisely state which sections of the 1966 lease are being incorporated. Instead it provides that the “terms and conditions of the production royalties” remain as stated in the original 1966 leases. Those terms and conditions are interspersed throughout the 1966 leases, and are addressed in section 2 (setting the initial rate and minimum royalty payments, among other things), section 5 (setting out the authority and limitations on adjusting royalty rates at renewals), and section 14 (setting out additional limitations on royalty adjustments).

By not specifying which of these sections were incorporated and how, the 2004 lease form is ambiguous. Were only the provisions of section 2 intended to be incorporated? Or were the provisions of sections 5 and 14 also to be included? M-37036 assumed the former. Despite section 5 addressing the adjustment of royalties and other terms during renewals, M-37036 assumed that section 5 of the 1966 leases was not incorporated and had no bearing in analyzing the 2004 leases.<sup>54</sup> It addressed the meaning of section 5 solely as an alternative argument. Yet this assumption is unwarranted because the “terms and conditions” of the production royalties are not fully addressed without sections 5 and 14, so they should be incorporated in some fashion. Precisely how they should be incorporated is also ambiguous given that the royalty and other adjustment provisions of section 5 are intertwined with the renewal provisions of section 1 of the 1966 leases.<sup>55</sup>

In short, the meaning of the 2004 leases is ambiguous.<sup>56</sup> Given this ambiguity, extrinsic evidence beyond the “four corners” of the document may be considered to ascertain the intent of the contracting parties.<sup>57</sup> Examining the decision files of the BLM resolves the ambiguity. The record shows that the BLM renewed the leases in 1989 under the same terms as the 1966 leases, and did so again in 2004.

The circumstances surrounding the 1989 renewal provide important context for understanding the 2004 renewal. The decision file for the 1989 renewal conclusively establishes that the BLM intended to renew the leases in 1989 on the same terms as the original 1966 leases. The BLM initially issued a decision document in September of 1988 that would have renewed the leases on different terms from the original 1966 leases, but the BLM quickly reassessed the matter and

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<sup>53</sup> 2004 Leases at § 14.

<sup>54</sup> See M-37036 at 6 (“Neither of these imported provisions includes the lease renewal provisions of the 1966 leases.”); *id.* at 7 (“\* \* \* there is no conflicting renewal provision [to the one in the 2004 lease form] referenced elsewhere in the 2004 leases”).

<sup>55</sup> The interrelationship is seen directly in the text of section 5, which refers to the “successive” renewals that are provided by section 1 of the 1966 leases.

<sup>56</sup> Given the already described ambiguity that is inherent in the 2004 lease forms, this opinion does not address whether there are other potential ambiguities in those forms.

<sup>57</sup> See, e.g., *Daewoo Eng'g & Constr. Co. v. United States*, 557 F.3d 1332, 1337 (Fed. Cir. 2009) (“Where the meaning of a written instrument is unclear, courts look to extrinsic evidence to resolve the question.”).

formally vacated its decision “because the new lease forms submitted for signature will alter the terms and conditions of the original leases.”<sup>58</sup>

The unusual act of BLM vacating its initial renewal decision was based, in part, on a recommendation memorandum from the Assistant District Manager for Solid Minerals. The memorandum concluded that “[b]ecause of the highly negotiated terms and conditions of these two leases, which contain many references to requirements to be applied during lease renewal periods, I recommend that these leases be renewed under the existing terms and conditions and in their present form, i.e., not on the new lease form.”<sup>59</sup>

A few months after vacating its initial decision, the BLM issued a revised decision renewing the leases under the same terms as the original leases. The BLM’s decision stated unambiguously that it intended to renew the leases with the same terms and conditions as the original leases: “The Forest Service and the Bureau of Land Management have agreed to the renewal of the enclosed Preference Right Leases MNES 1352 and MNES 1353 *under the existing terms and conditions of the original leases*. Enclosed are lease renewal forms transmitted for your signature and return to this office.”<sup>60</sup>

The forms the BLM transmitted for signature were Standard Forms 3520-7 (December 1984), with the original 1966 leases attached and incorporated by reference into the standard forms through two special stipulations included as section 14 of the forms (the same form and special stipulations that would be used in the 2004 renewals). In sum, the 1989 leases, although using Standard Form 3520-7, renewed the 1966 leases without alteration of the operative terms. This fact was acknowledged in M-37036.<sup>61</sup>

When the 2004 renewal was made, there is no statement or other indication in the files that the BLM or the company intended to change any of the terms of the 1989 leases. To the contrary, the record shows that the leases were expected to be renewed on the same terms. Before granting the 2004 lease renewals, the BLM’s Division of Solid Minerals stated by internal memorandum that “[w]e have no objection to Preference Right Leases MNES-1352 and MNES-1353 being renewed for ten years, as stipulated within the lease language.”<sup>62</sup> The BLM official making this recommendation was the same official who recommended renewing the leases in 1989 on the same terms as the 1966 leases. His reference to the “lease language” therefore was informed by his knowledge of the 1989 leases and refers to the terms of the governing 1966 leases. Later, the

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<sup>58</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Decision Vacated” (Oct. 27, 1988).

<sup>59</sup> Memorandum from BLM Assistant District Manager for Solid Minerals, Rolla, Vincent Vogt, to the State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Hardrock Mineral Leases MNES-1352 and MNES-1353” (Oct. 14, 1988).

<sup>60</sup> Decision by BLM Deputy State Director for Mineral Resources, Eastern States Office to INCO Alloys International, Inc., “Preference Right Leases Renewed, Lease Forms Transmitted for Signature” (Apr. 25, 1989) (emphasis added).

<sup>61</sup> M-37036 at 6, 12.

<sup>62</sup> Memorandum from BLM Assistant Field Manager for Solid Minerals, Rolla, Vincent Vogt, to State Director, Eastern States Office, “Renewal of Preference Right Leases MNES-1352 and MNES-1353” (Apr. 12, 1999).

Forest Service also stated that it had no objection to the renewal, as “[t]he terms, conditions and stipulations have been reviewed, and it has been determined that they are sufficient to protect the resources of the United States.”<sup>63</sup>

The BLM issued its decision granting the lease renewals on November 12, 2003, changing neither the terms of the lease renewals nor the conditions and stipulations, and provided the same standard form for signature as the BLM provided to the lessee in 1989.<sup>64</sup> The BLM did not indicate any change to the contracts in its decision, and the course of dealings between the parties had established the common basis of understanding that the 1966 lease terms were to remain in effect.<sup>65</sup>

While M-37036 attempted to distinguish between the 1989 and 2004 renewals to explain how two identically worded leases could have drastically different meanings, the attempt fails. As noted earlier, M-37036 concludes that the two renewals differ “because the BLM’s discretion was limited in 1989 but not in 2004.”<sup>66</sup> But even if that were true, it does not follow that BLM intended to exercise its discretion by drastically altering the meaning of the same lease forms in 2004 (without mentioning the fact to the lessee or even in its own internal files). As discussed above, there is simply no evidence that either the BLM or the Forest Service intended in the 2004 renewal to deviate from the terms previously in effect in the 1989 renewal (i.e., the terms of the original 1966 leases). The 2004 renewal could, and did, as discussed above, renew the leases under the same terms as in 1989, thereby retaining the renewal terms of the 1966 leases.

In sum, we have found no documents or other evidence that indicate in any way that the 2004 renewals were to be on altered terms or conditions from the 1989 leases. Because the 1989 leases renewed the leases under the same terms and conditions as the original 1966 leases, those terms remain operative in the 2004 renewal and, as discussed below, entitle Twin Metals to a third renewal.<sup>67</sup>

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<sup>63</sup> Decision of the USDA Forest Service, Regional Forester, Randy Moore, to BLM State Director, Eastern States Office, “Renewal of Preference Right Leases MNES 1352 and MNES 1353” (July 18, 2003).

<sup>64</sup> Decision of BLM Chief of Use Authorization, Division of Resources Planning, Use and Protection, to American Copper and Nickel Co., “Additional Requirements to be Met” (Nov. 12, 2003).

<sup>65</sup> The courts have recognized that the parties’ own construction of an ambiguous written instrument is important when determining its meaning. See *DDB Techs., L.L.C. v. MLB Advanced Media, L.P.*, 517 F.3d 1284, 1292 (Fed. Cir. 2008); 11 Richard A. Lord, *Williston on Contracts* § 32:14 (4th ed. 1999) (“[T]he parties’ own practical interpretation of the contract—how they actually acted, thereby giving meaning to their contract during the course of performing it—can be an important aid to the court.”).

<sup>66</sup> M-37036 at 6. The M-Opinion reasons that the 1989 renewal, unlike the 2004 renewal, had to be on the same terms as the original 1966 leases because it served as an extension of time for commencement of production as authorized by the second sentence of section 5 of the 1966 leases. M-37036 at 6. That provision states that a renewal made while the extension is in effect must be “without readjustment except of royalties payable . . .” 1966 Lease, § 5 (second sentence). Accordingly, to comply with the dictates of section 5 of the 1966 Leases, the M-Opinion concludes that the 1989 renewal had to be on the same terms as the 1966 leases. The M-Opinion concludes that the 2004 renewal, in contrast, did not have to be on the same terms because it could not and did not provide an extension. It is important to note that nothing on the face of the 1989 lease form states that it serves as an extension, and there is no evidence in the BLM’s decision files that the lessee sought an extension or that BLM granted one.

<sup>67</sup> Because the parties intended for the renewal terms of the 1966 leases to remain operative, there is no need to address the meaning of the renewal provision used in the 2004 standard form, which provides for a “preferential

## The 1966 Lease Terms Provide for a Third Right of Renewal

The renewal terms of the 1966 leases are not ambiguous in providing Twin Metals with a non-discretionary right to a third renewal, subject to the United States' right to impose reasonable new terms and conditions. Section 1 of the 1966 leases sets out the overall renewal rights, and it provides "a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 C.F.R. § 3221.4(f) and the provisions of this lease."<sup>68</sup> The referenced regulation is similarly unambiguous in providing a right to successive renewals, in relevant part providing lessees with:

[A] right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereof.<sup>69</sup>

Thus, section 1 of the 1966 leases, by its own terms and by reference to section 3221.4(f) of the regulations, establishes that the lessee has a right of renewal for successive ten-year periods, and that the renewals are subject to the provisions of the lease, including provisions regarding subsequent terms and conditions. No other provision of the leases negates this right of renewal. Accordingly, the 1966 leases provide the lessee with a non-discretionary right of renewal for successive ten-year periods, as long as the lessee complies with the lease terms.

M-37036 reached a different conclusion by finding that section 5 of the leases conditioned the lessee's right of renewal upon the lessee having begun production by the end of the primary term. But the text of section 5 does not support this interpretation. Instead, section 5 merely provides terms that govern the extent to which the leases are subject to readjustment at the time of renewal; it does not abrogate the non-discretionary right of renewal provided by section 1. The text of section 5 provides:

Renewal Terms. The Lessor shall have the right to reasonably readjust and fix royalties payable hereunder at the end of the primary term of this lease and thereafter at the end of each successive renewal thereof unless otherwise provided by the law at the time of the

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right in the lessee to renew for successive periods of 10 years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period."

<sup>68</sup> 1966 leases § 1.

<sup>69</sup> 43 C.F.R. § 3221.4(f) (1966). M-37036 suggests that the last sentence of section 3221.4(f) supports its conclusion that production is a condition of renewal. M-37036 at 11–12. The last sentence of section 3221.4(f) states: "An application for renewal of the lease must be filed in a manner similar to that prescribed for extension of a [prospecting] permit in § 3221.3(a)." M-37036 reasons from this language that because section 3221.3(a) required a person seeking an extension of a prospecting permit to show that he has "diligently performed prospecting activities," section 3221.4(f) must analogously require a person who is filing for renewal of a lease to make "a showing of diligence in performing ... production." M-37036 at 11. M-37036 provided no administrative or judicial precedent to support this interpretation, and it fails upon closer examination. Section 3221.4(f) incorporated section 3221.3(a) only to the extent it dealt with the "manner" of filing (§ 3221.3(a) required filing an application in triplicate and with a filing fee within 90 days of the permit expiration); it does not incorporate the substantive criteria under which a prospecting permit extension is adjudicated. It thus provides no support for the conclusion that a production requirement is a condition of renewal.

expiration of any such period, and to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover; provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in the royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of this lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day. The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the Lessee that the lease cannot be successfully operated at a profit or for other reasons, and the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable hereunder if at the end of the primary or renewal period such an extension shall be in effect, but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time. If the Lessee shall be entitled to renewal without readjustment except of royalties payable hereunder, the Secretary of the Interior may in his discretion increase the royalty rate prescribed in subsection (b) of Section 2 up to, but not exceeding (i) 5% during the first ten-year renewal period, (ii) 6% during the second ten-year renewal period, and (iii) 7% during the third ten-year renewal period. The extent of readjustment of royalty, if any to be made under this section shall be determined prior to the commencement of the renewal period.

Rather than conditioning the right of renewal upon production as M-37036 argues, section 5 sets forth the degree to which the BLM may readjust the terms, conditions, and royalty rates during lease renewals, and creates an incentive for early production by limiting BLM's discretion during the first three lease renewals if production has begun.

The first sentence in section 5 has engendered the most commentary, but its meaning is evident from the text. Parsed out, the initial clause grants the BLM two rights:

1. The right to reasonably readjust and fix royalties at the end of the primary term of the lease and at the end of each successive renewal thereof unless otherwise provided by the law at the time of the expiration of any such period; and
2. The right to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover.

These rights are subject to one condition set out in the proviso clause. The proviso provides an incentive to production by restricting the BLM's right to adjust the terms of the leases during the first three renewals if production has begun during the primary term:

That the Lessee has the right to three successive ten-year renewals of the lease with any readjustment in the royalties payable limited to that provided in the 1966 lease and with no readjustment of any of the other terms and conditions of this lease unless at the end of the

primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day.

Under the terms of this proviso, the consequence of a failure to begin production within the primary term is not the loss of the right to renew, as M-37036 asserted, but the loss of the right to a renewal with extremely limited readjustments.

Despite the plain wording of this proviso, M-37036 attempted to argue that the “unless” clause at the end of the sentence “qualifies the very right to renew.”<sup>70</sup> According to that M-Opinion, this “proper” meaning was demonstrated by deleting text from the provision:

[T]he proper meaning of the proviso is clear when the last clause is placed next to the provision it actually qualifies: “[T]he Lessee shall have the right to three successive ten-year renewals of this lease ... unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day.”<sup>71</sup>

Under this interpretation, the final “unless” phrase in the proviso imposes a production requirement that negates *sub silentio* the renewal rights provided in section 1 of the leases.

This interpretation is not correct. Deleting the text from the proviso does not clarify its meaning, it simply (and not surprisingly) changes the meaning. The deleted text works with the “unless” phrase to form one restrictive modifier that states how the right to three successive renewals will be limited if production has begun. In other words, the “unless” phrase does not qualify the right to renewal but is part and parcel of the restrictive modifier describing precisely how the BLM’s readjustment rights were to be limited if production had begun. Deleting the text thus changes, rather than clarifies, the meaning of the proviso.

Moreover, the interpretation suggested by M-37036 does not account for the fact that the entire sentence is a proviso to the first clause. The first clause describes the BLM’s readjustment authority at renewal and evinces no intention to circumscribe the renewal rights set out in section 1 of the leases or create a production condition on renewal. The proviso is properly interpreted as qualifying this clause,<sup>72</sup> but the interpretation suggested by M-37036 elevates the proviso into a separate, standalone provision that creates a production condition, which negates the section 1 renewal rights. Such an interpretation is not warranted by the text or placement of the proviso.

The remaining two sentences of section 5 reinforce that the right to renew is not impacted by section 5, but merely the amount of readjustments that can be made with a renewal. The second sentence has three clauses. The first clause gives the Secretary of the Interior broad discretion to grant extensions of time for commencement of production in the interest of conservation, upon a showing that the lease cannot be operated for a profit, or “for other reasons.” The second clause makes clear that a consequence of granting an extension is that the lessee will continue to enjoy the

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<sup>70</sup> M-37036 at 9.

<sup>71</sup> *Id.* (alteration and ellipsis in original).

<sup>72</sup> See, e.g., *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (“[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.”).

favorable limitations on lease readjustments if renewal occurs while the extension is in effect: “the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable.”

The third clause provides that “the Lessee shall not be entitled to subsequent *such* renewals unless it shall have begun production within the extended time” (emphasis added). The phrase “such renewals” refers back to the preceding clause, which references renewals without readjustment of the terms and conditions.<sup>73</sup> In other words, the second sentence of section 5 takes as a given the right to renew the lease; it is only the terms and conditions of a renewal that are affected by the authorized extension of time for commencement of production.

Finally, the third sentence of section 5 is straightforward. It provides a schedule for the rate readjustments when the lessee is entitled to renewal without readjustment except of royalties. It limits rate readjustments to:

- 5% during the first ten-year renewal period;
- 6% during the second ten-year renewal period; and
- 7% during the third ten-year renewal period.

As reflected by this analysis of section 5, its provisions set out the right of BLM to readjust royalty rates and lease terms and conditions at the time of renewal, but creates a production incentive for the lessee by providing BLM with only limited readjustment rights if the lessee begins production by the end of the primary term (or by the end of an extension if one is granted). The commencement of production is thus a condition precedent to limiting BLM’s readjustment rights, but it is not a condition precedent to the right to a renewal.

M-37036 attempts to support its interpretation that section 5 imposes a production condition on renewal with a number of subsidiary arguments. The M-Opinion argues, for example, that its position is longstanding and supported by a 1986 memorandum from an Associate Solicitor.<sup>74</sup> While that 1986 Opinion answered the narrow renewal question before it correctly, finding that BLM could renew the leases in the absence of production, its reasoning is faulty and was not even relied upon in M-37036. More specifically, the 1986 Opinion improperly focused only on the second sentence of section 5, without reference to section 1 of the lease or even the other sentences of section 5. It summarily concluded that the final clause of the second sentence (which states that “the lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time”) precludes *all* subsequent renewals. As discussed above, that is an

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<sup>73</sup> M-37036 asserts that the last clause of the second sentence supports its interpretation, apparently viewing the phrase “shall not be entitled to subsequent such renewals” as effectively meaning “shall not be entitled to any renewals.” The M-Opinion’s construction does not square with the actual wording of the clause.

<sup>74</sup> M-37036 at 12 (citing Memorandum from Associate Solicitor, Energy and Resources, signed by Kenneth G. Lee, Assistant Solicitor, Branch of Eastern Resources, to Deputy State Director, Mineral Resources, Eastern States Office, BLM, “Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Incorporated for Leases ES 01352 and ES 01353” (Apr. 2, 1986) (1986 Opinion)).

improper reading that ignores what the clause is qualifying and gives no meaning to the phrase “such renewals,” instead transforming it into “all renewals.” Moreover, the BLM appropriately did not follow the advice given in the 1986 Opinion when it renewed the leases for a second time in 2004. The 1986 Opinion thus provides no support for concluding that production is a precondition to the right to renew.

M-37036 also argues that the lease requirement to pay minimum royalties in lieu of production does not negate the precondition of production for mandatory renewals.<sup>75</sup> While it is certainly true that BLM could impose both requirements, the very case cited in the M-Opinion shows that when BLM intends to impose a production requirement, it will do so explicitly. In *General Chemicals (Soda Ash) Partners*,<sup>76</sup> the BLM had imposed a minimum royalty payment in a sodium lease but also included an express production precondition for renewal, stating that “[t]he authorized officer will reject an application for renewal of this lease if, at the end of the lease’s current term, sodium is not being produced.”<sup>77</sup> *General Chemicals* underscores that the BLM will explicitly include a production precondition when it so intends.<sup>78</sup> There is no such provision in the leases at issue.

Moreover, the historical record of the 1966 lease implementation shows that production was not made a condition of renewal. For example, as stated in the background section above, the BLM denied INCO’s requested waiver of minimum royalty payments precisely because there was no production requirement in the lease:

The provision for minimum royalty in lieu of production requirements was a lease term arrived at through pre-lease negotiations between the Bureau and INCO. The intention of the minimum royalty is to spur development of the resource and, in effect, is the only diligence requirement contained in the subject leases. Waiver of minimum royalty removes all incentive for the timely development of the leases.<sup>79</sup>

Later, when processing the 1989 renewal application, the BLM wrote in an internal memorandum that it would be “inappropriate” to impose a production requirement upon the lessee in the lease renewal, especially “when no other hardrock leases in our District contain such a requirement.”<sup>80</sup>

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<sup>75</sup> M-37036 at 12–13.

<sup>76</sup> 176 IBLA 1 (2008).

<sup>77</sup> *Id.* at 5.

<sup>78</sup> M-37036 suggests that *General Chemicals* supports its position because the Board in that case found that the payment of minimum royalties did not satisfy the lease’s production requirement. M37036 at 13 (citing *General Chemicals*, 176 IBLA. at 9.). Given that the lease in *General Chemicals* included an express production requirement, while the leases at issue do not, the case is clearly distinguishable and actually supports the conclusion reached here that no production requirement is imposed by the leases.

<sup>79</sup> Memorandum from BLM Associate District Manager, Milwaukee to the State Director, Eastern States Office, “Recommendation Regarding an Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Inc.” (Aug. 28, 1985), at 2.

<sup>80</sup> Memorandum from BLM Assistant District Manager for Solid Minerals, Rolla, Vincent Vogt, to the State Director, Eastern States Office, “Recommendations for Lease Renewals, International Nickel Corporation Hardrock Mineral Leases MNES-1352 and MNES-1353” (Oct. 14, 1988) at 2.



Finally, M-37036 makes in essence a public policy argument that a lease without a production precondition would allow for speculative holding of mineral rights in contravention of Congress's intent to encourage mineral development and "provide a fair return to the American taxpayer."<sup>81</sup> But the leases here do provide incentives for production by imposing minimum royalty payments and authorizing greater revisions of the royalty rates and other terms when there has been no production. The American public has received over \$1.4 million dollars in royalty payments, and Twin Metals has asserted that it has spent over \$400 million in exploration activity. The public policy concern is unfounded in this instance.

In summary, neither the terms of the 1966 leases, the course of conduct of the parties over the last 50 years, nor public policy suggest that a production precondition is required.

### **Conclusion**

M-37036 improperly interpreted the leases at issue and is withdrawn. As discussed above, the terms of the original leases issued to Twin Metals' predecessor-in-interest in 1966 remain operative in the 2004 lease renewal. The original 1966 leases provide Twin Metals with a non-discretionary right to a third renewal, subject to the United States' right to impose reasonable terms and conditions as authorized by the 1966 leases. Accordingly, the BLM does not have the discretion to deny the renewal application.



Daniel H. Jorjani

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<sup>81</sup> M-37036 at 11.

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

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# Conversation Contents

## Twin Metals press release question

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/3. Twin Metals press release question/3.1 2017.12.21 Twin Metals - BLM if asked statement.docx  
/3. Twin Metals press release question/4.1 2017.12.21 Twin Metals - BLM if asked statement (1) SOL reviewed.docx

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 09:15:57 GMT-0700 (MST)  
**To:** Beverly Winston <bwinston@blm.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Twin Metals press release question

Bev, On the question of (b) (5)

[REDACTED]

[REDACTED]

Thank you. --Karen

**"Winston, Beverly" <bwinston@blm.gov>**

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**From:** "Winston, Beverly" <bwinston@blm.gov>  
**Sent:** Thu Dec 21 2017 09:21:11 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>, "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Fwd: Twin Metals press release question  
**Attachments:** M Opinion news release\_12.21.17.docx

Adding Briana.

----- Forwarded message -----

From: **Winston, Beverly** <bwinston@blm.gov>  
Date: Thu, Dec 21, 2017 at 11:20 AM  
Subject: Re: Twin Metals press release question  
To: "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

Here's the latest, Karen.

Thank you for the update.

On Thu, Dec 21, 2017 at 11:15 AM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Bev, On the question of (b) (5)

Thank you. --Karen

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

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Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

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**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 11:13:39 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Twin Metals press release question  
**Attachments:** 2017.12.21 Twin Metals - BLM if asked statement.docx

Hi Karen, Here is a draft "if asked" statement. Thank you.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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Bev, On the question of (b) (5)

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Thank you. --Karen

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**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:53:53 GMT-0700 (MST)  
**To:** "Winston, Beverly" <bwinston@blm.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Re: Twin Metals press release question  
**Attachments:** 2017.12.21 Twin Metals - BLM if asked statement (1) SOL reviewed.docx

Bev, Here's the "if asked" statement to use instead of the news release. Thank you. --Karen

On Thu, Dec 21, 2017 at 11:21 AM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:  
Adding Briana.

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From: **Winston, Beverly** <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
Date: Thu, Dec 21, 2017 at 11:20 AM  
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To: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

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Bev, On the question of (b) (5)

[REDACTED]

Thank you. --Karen

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

**Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>**

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**From:** Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**Sent:** Thu Dec 21 2017 19:01:15 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**CC:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Re: Twin Metals press release question

Thank you, Karen. This looks good, although media contact may change depending on release date.

*Bev Winston*  
*BLM Public Affairs | 202-912-7239*

On Dec 21, 2017, at 5:53 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

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[REDACTED]

[REDACTED]

Thank you. --Karen

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Bev Winston

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<2017.12.21 Twin Metals - BLM if asked statement (1) SOL reviewed.docx>

**Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

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**From:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Fri Dec 22 2017 05:18:56 GMT-0700 (MST)  
**To:** Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**CC:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Re: Twin Metals press release question

Hi Bev, I'm not sure what the last part of your sentence means about media contact may change. —Karen

Sent from my iPad

On Dec 21, 2017, at 9:01 PM, Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

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*Bev Winston*  
*BLM Public Affairs | 202-912-7239*

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**Date:** Thu, Dec 21, 2017 at 11:20 AM  
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Bev, On the question of (b) (5)

[REDACTED]

[REDACTED]

Thank you. --Karen

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Bev Winston  
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Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

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reviewed.docx>

**"Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>**

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**From:** "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**Sent:** Fri Dec 22 2017 07:02:10 GMT-0700 (MST)  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**CC:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, "Newell, Russell" <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>  
**Subject:** Re: Twin Metals press release question

Sorry Karen not to explain sooner.

The DOI comms is updating the statement with the following line for contacts,

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That way I can handle queries into Saturday and hand off to the spokesman on duty after Christmas.

Thank you for your work on this.



Bev

On Fri, Dec 22, 2017 at 7:18 AM, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Hi Bev, I'm not sure what the last part of your sentence means about media contact may change. —Karen

Sent from my iPad

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*Bev Winston*  
*BLM Public Affairs | 202-912-7239*

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<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

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[REDACTED]

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Bev Winston  
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**Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

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**Sent:** Fri Dec 22 2017 07:20:39 GMT-0700 (MST)  
**To:** "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**CC:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, "Newell, Russell" <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>  
**Subject:** Re: Twin Metals press release question

I see. Thanks.

Sent from my iPad

On Dec 22, 2017, at 9:02 AM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

Sorry Karen not to explain sooner.

The DOI comms is updating the statement with the following line for contacts,

**CONTACT:** BLM Public Affairs at [BLM\\_PRESS@blm.gov](mailto:BLM_PRESS@blm.gov)

That way I can handle queries into Saturday and hand off to the spokesman on duty after Christmas.

Thank you for your work on this.

Bev

On Fri, Dec 22, 2017 at 7:18 AM, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Hi Bev, I'm not sure what the last part of your sentence means about media contact may change. —Karen

Sent from my iPad

On Dec 21, 2017, at 9:01 PM, Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

Thank you, Karen. This looks good, although media contact may change depending on release date.

*Bev Winston*  
*BLM Public Affairs | 202-912-7239*

On Dec 21, 2017, at 5:53 PM, Hawbecker, Karen  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Bev, Here's the "if asked" statement to use instead of the news release.  
Thank you. --Karen

On Thu, Dec 21, 2017 at 11:21 AM, Winston, Beverly  
<[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

Adding Briana.

----- Forwarded message -----

From: **Winston, Beverly** <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
Date: Thu, Dec 21, 2017 at 11:20 AM  
Subject: Re: Twin Metals press release question  
To: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

Here's the latest, Karen.  
Thank you for the update.

On Thu, Dec 21, 2017 at 11:15 AM, Hawbecker, Karen  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Bev, On the question of (b) (5)

[REDACTED]

[REDACTED]

Thank you. --Karen

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

<2017.12.21 Twin Metals - BLM if asked statement (1) SOL  
reviewed.docx>

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)



# News Release

Eastern States Office

DRAFT: December 21, 2017  
For Immediate Release

Contact: Bev Winston  
202-208-4602

(b) (5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b) (5)

[REDACTED]

[REDACTED]

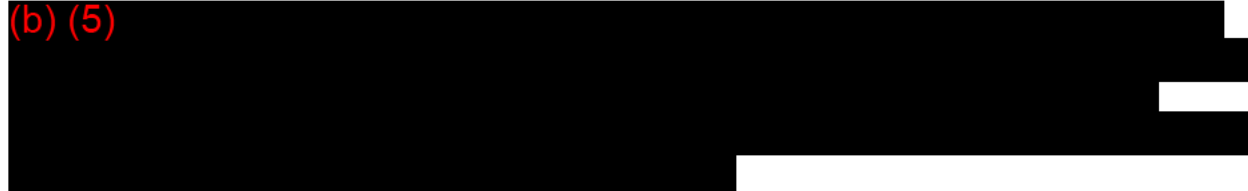
[REDACTED]

DRAFT

**Reversal of Twin Metals Opinion, M-37036**

**BLM PRESS STATEMENT (IF ASKED)**

(b) (5)






**CONTACTS**

Bev Winston, BLM Acting Deputy Assistant Director for Public Affairs -- 202-208-6913

**Reversal of Twin Metals Opinion, M-37036**

**BLM PRESS STATEMENT (IF ASKED)**

(b) (5)



**CONTACTS**

Bev Winston, BLM Acting Deputy Assistant Director for Public Affairs -- 202-208-6913



# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:35 AM

# Conversation Contents

## Twin Metals "if asked" statement

### Attachments:

/4. Twin Metals "if asked" statement/1.1 2017.12.21 Twin Metals - BLM if asked statement.docx

/4. Twin Metals "if asked" statement/3.1 2017.12.21 Twin Metals - BLM if asked statement (1) SOL reviewed.docx

---

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 11:37:10 GMT-0700 (MST)  
**To:** Jack Haugrud <jack.haugrud@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Twin Metals "if asked" statement  
**Attachments:** 2017.12.21 Twin Metals - BLM if asked statement.docx

Jack, Here's a draft "if asked" statement based on BLM's draft press release. If you have no edits or comments we'll share it with BLM. Thanks. --Karen

---

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:32:33 GMT-0700 (MST)  
**To:** Jack Haugrud <jack.haugrud@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Re: Twin Metals "if asked" statement

Jack, Have you shared this with BLM or should we? --Karen

On Thu, Dec 21, 2017 at 1:37 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Jack, Here's a draft "if asked" statement based on BLM's draft press release. If you have no edits or comments we'll share it with BLM. Thanks. --Karen

---

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:56:43 GMT-0700 (MST)  
**To:** Russell Newell <russell\_newell@ios.doi.gov>  
Jack Haugrud <jack.haugrud@sol.doi.gov>, Briana Collier

**CC:** <briana.collier@sol.doi.gov>, Beverly Winston  
<bwinston@blm.gov>

**Subject:** Twin Metals "if asked" statement

**Attachments:** 2017.12.21 Twin Metals - BLM if asked statement (1) SOL  
reviewed.docx

Russell, I've attached an "if asked" statement that may be used to answer inquiries after the Twin Metals opinion is issued. Please let us know if you have any questions. Thank you. --Karen

**Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>**

---

**From:** Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>  
**Sent:** Thu Dec 21 2017 19:22:42 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Beverly Winston <[bwinston@blm.gov](mailto:bwinston@blm.gov)>, Briana Collier  
**CC:** <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Jack Haugrud  
<[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Subject:** Re: Twin Metals "if asked" statement

Thank you Karen

On Thu, Dec 21, 2017 at 5:57 PM Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
| Russell, I've attached an "if asked" statement that may be used to answer inquiries after the Twin Metals opinion is  
| issued. Please let us know if you have any questions. Thank you. --Karen

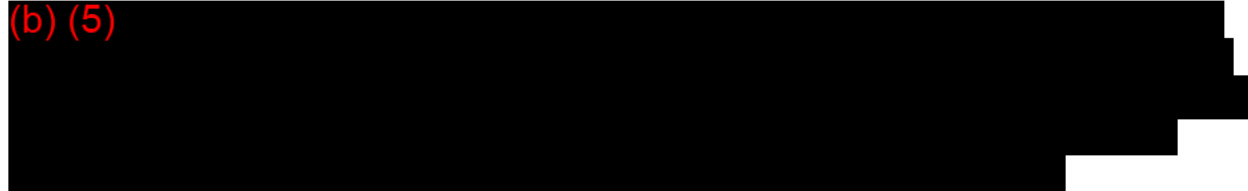
--

Russell Newell  
Deputy Director of Communications  
U.S. Department of the Interior  
(202) 208-6232  
@Interior

**Reversal of Twin Metals Opinion, M-37036**

**BLM PRESS STATEMENT (IF ASKED)**

(b) (5)






**CONTACTS**

Bev Winston, BLM Acting Deputy Assistant Director for Public Affairs -- 202-208-6913

**Reversal of Twin Metals Opinion, M-37036**

**BLM PRESS STATEMENT (IF ASKED)**

(b) (5)



**CONTACTS**

Bev Winston, BLM Acting Deputy Assistant Director for Public Affairs -- 202-208-6913

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:36 AM

# Conversation Contents

## Twin Metals M-Op with Weeks Act citation

### Attachments:

/5. Twin Metals M-Op with Weeks Act citation/1.1 2017.12.21 Twin Metals -- Draft Final.docx

/5. Twin Metals M-Op with Weeks Act citation/8.1 2017.12.21 Twin Metals -- Draft Final + Weeks Act cite.docx

/5. Twin Metals M-Op with Weeks Act citation/9.1 2017.12.21 Twin Metals -- Draft Final + Weeks Act cite CLEAN.docx

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## "Collier, Briana" <briana.collier@sol.doi.gov>

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 14:38:17 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Subject:** Twin Metals M-Op with Weeks Act citation  
**Attachments:** 2017.12.21 Twin Metals -- Draft Final.docx

Karen, Jack: I included a citation for the Weeks Act in the below version. The opinion only references the Weeks Act twice -- both times in the same paragraph on p.2. I only included a citation for the first reference, because that seemed sufficient to me. Thank you.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

\*New Phone: (505) 248-5604

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---

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:18:03 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Jack, I think we need the Pub. L. No. for the Weeks Act, but we're having trouble finding it. Still looking. --Karen

On Thu, Dec 21, 2017 at 4:38 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Karen, Jack: I included a citation for the Weeks Act in the below version. The opinion only references the Weeks Act twice -- both times in the same paragraph on p.2. I only included a citation for the first reference, because that seemed sufficient to me. Thank you.

Briana Collier  
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---

**"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**

**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 15:20:46 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**CC:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Thanks Briana.

On Thu, Dec 21, 2017 at 4:38 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Karen, Jack: I included a citation for the Weeks Act in the below version. The opinion only references the Weeks Act twice -- both times in the same paragraph on p.2. I only included a citation for the first reference, because that seemed sufficient to me. Thank you.

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---

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**



**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:31:29 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Pamela did not answer. I can keep looking when I am back at my desk in about 10 minutes.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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On Thu, Dec 21, 2017 at 3:18 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
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---

**"Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:33:14 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Kendra may have found the Pub. L. No. on Heinonline

On Thu, Dec 21, 2017 at 5:31 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Pamela did not answer. I can keep looking when I am back at my desk in about 10 minutes.

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---

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 15:56:09 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

The citations to the Weeks Act that I am seeing in cases are either just to the specific section of Title 16, or to the statutory section and the Statute at Large. None of them seem to include a Public Law number.

Here is one more complete citation from a case in the W. D. of N. Carolina (2014):

Twenty years after passing the Forest Reserve Act, and ten years after North Carolina passed its 1901

enactment consenting to the federal government's future acquisition of its lands to become a national forest, Congress approved the first comprehensive national forest policy legislation, the Weeks Forestry Act. Act of Mar. 1, 1911, ch. 186, §§ 4-14, 36 Stat. 961, 962-3 (1911) (codified as amended at 16 U.S.C. §§ 480, 500, 515 to 519, 521, 552, and 563).

[United States v. Parker. 36 F. Supp. 3d 550. 572. 2014 U.S. Dist. LEXIS 105452. \\*58. 2014 WL 3809207](#)

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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## **"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:58:02 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

This is what I'll include:

Pub. L. No. 61-436, § 6, 36 Stat. 961, 962 (1911) (codified as amended at 16 U.S.C. § 515).

Kendra found the Pub. L. No. on Hein Online.

On Thu, Dec 21, 2017 at 5:56 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

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Twenty years after passing the Forest Reserve Act, and ten years after North Carolina passed its 1901 enactment consenting to the federal government's future acquisition of its lands to become a national forest, Congress approved the first comprehensive national forest policy legislation, the Weeks Forestry Act. Act of Mar. 1, 1911, ch. 186, §§ 4-14, 36 Stat. 961, 962-3 (1911) (codified as amended at 16 U.S.C. §§ 480, 500, 515 to 519, 521, 552, and 563).

[United States v. Parker, 36 F. Supp. 3d 550, 572, 2014 U.S. Dist. LEXIS 105452, \\*58, 2014 WL 3809207](#)

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
[505 Marquette Ave., NW Ste.1800](#)  
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On Thu, Dec 21, 2017 at 3:33 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Kendra may have found the Pub. L. No. on Heinonline

On Thu, Dec 21, 2017 at 5:31 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Pamela did not answer. I can keep looking when I am back at my desk in about 10 minutes.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
[505 Marquette Ave., NW Ste.1800](#)  
[Albuquerque, NM 87102](#)

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On Thu, Dec 21, 2017 at 3:18 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Jack, I think we need the Pub. L. No. for the Weeks Act, but we're having trouble finding it. Still looking. --  
Karen

On Thu, Dec 21, 2017 at 4:38 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Karen, Jack: I included a citation for the Weeks Act in the below version. The opinion only references the Weeks Act twice -- both times in the same paragraph on p.2. I only included a citation for the first reference, because that seemed sufficient to me. Thank you.

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---

**"Hawbecker, Karen"** <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 16:00:21 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Mariagrazia Caminiti <[Marigrace.Caminiti@sol.doi.gov](mailto:Marigrace.Caminiti@sol.doi.gov)>

**Subject:** Re: Twin Metals M-Op with Weeks Act citation  
**Attachments:** 2017.12.21 Twin Metals -- Draft Final + Weeks Act cite.docx

Jack, Here's the M-Op with the Weeks Act cite. It was no small feat to find the correct cite. We've got it nailed down now. --Karen

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**"Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

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**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 16:01:35 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Mariagrazia Caminiti <[Marigrace.Caminiti@sol.doi.gov](mailto:Marigrace.Caminiti@sol.doi.gov)>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation  
**Attachments:** 2017.12.21 Twin Metals -- Draft Final + Weeks Act cite  
CLEAN.docx

Here is the clean version with the correct Weeks Act cite.

On Thu, Dec 21, 2017 at 6:00 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Jack, Here's the M-Op with the Weeks Act cite. It was no small feat to find the correct cite. We've got it nailed down now. --Karen

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**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 16:03:12 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Thanks Karen. I just received the previous version of the M-Opinion in DTS to surname. Should I swap it out for this new version?

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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On Thu, Dec 21, 2017 at 4:01 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Here is the clean version with the correct Weeks Act cite.

On Thu, Dec 21, 2017 at 6:00 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

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On Thu, Dec 21, 2017 at 4:38 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

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## **"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 16:05:19 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, Mariagrazia Caminiti <Marigrace.Caminiti@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Thank you both. I very much appreciate it.

On Thu, Dec 21, 2017 at 6:00 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
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## **"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 16:06:25 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Yes, please. If you upload this new version now, I'll surname right after you. Then I need to bolt to get to my class tonight.



On Thu, Dec 21, 2017 at 6:03 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Thanks Karen. I just received the previous version of the M-Opinion in DTS to surname. Should I swap it out for this new version?

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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On Thu, Dec 21, 2017 at 4:01 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Here is the clean version with the correct Weeks Act cite.

On Thu, Dec 21, 2017 at 6:00 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

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---

**"Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 16:11:36 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>

**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, Mariagrazia Caminiti <Marigrace.Caminiti@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Jack, We've uploaded the new clean version with the Weeks Act cite in DTS and both Briana and I have surnamed it.  
If there are changes and a new version needs to be surnamed, please let us know. Thanks. --Karen

On Thu, Dec 21, 2017 at 6:05 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
Thank you both. I very much appreciate it.

On Thu, Dec 21, 2017 at 6:00 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Jack, Here's the M-Op with the Weeks Act cite. It was no small feat to find the correct cite. We've got it nailed down now. --Karen

On Thu, Dec 21, 2017 at 4:38 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
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---

**"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**

**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 16:34:05 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Mariagrazia Caminiti <[Marigrace.Caminiti@sol.doi.gov](mailto:Marigrace.Caminiti@sol.doi.gov)>  
**Subject:** Re: Twin Metals M-Op with Weeks Act citation

Great, thanks guys!

On Thu, Dec 21, 2017 at 6:11 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Jack, We've uploaded the new clean version with the Weeks Act cite in DTS and both Briana and I have surnamed it.  
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DRAFT – Privileged and Confidential  
December 8, 2017

M-

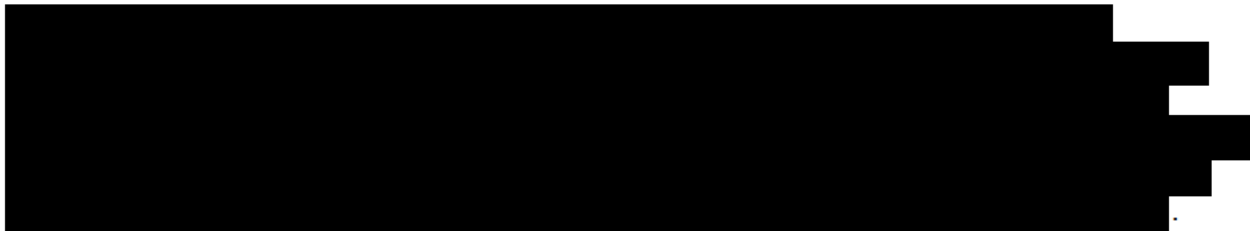
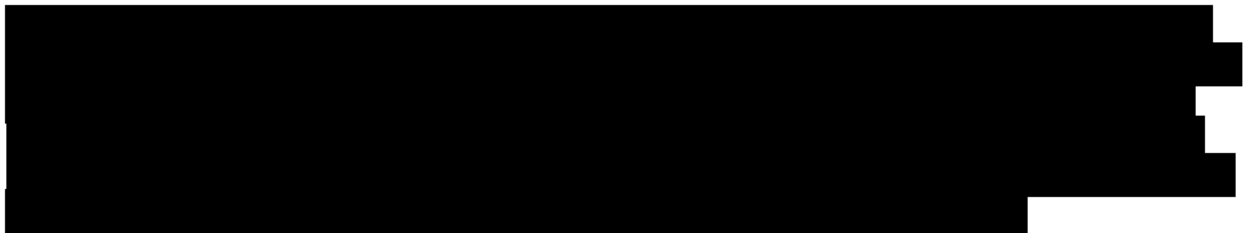
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

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A large rectangular area of text is completely redacted with a solid black box.



A single line of text is redacted with a solid black box.



A single line of text is redacted with a solid black box.



A block of text is redacted with a solid black box, consisting of two lines.



A block of text is redacted with a solid black box, consisting of two lines.



A block of text is redacted with a solid black box, consisting of two lines.



A large block of text is redacted with a solid black box, spanning approximately five lines.



A block of text is redacted with a solid black box, consisting of two lines.



A block of text is redacted with a solid black box, consisting of two lines.

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A block of text is redacted with a solid black box, consisting of three lines. A horizontal line is visible above the first line of the redacted text.

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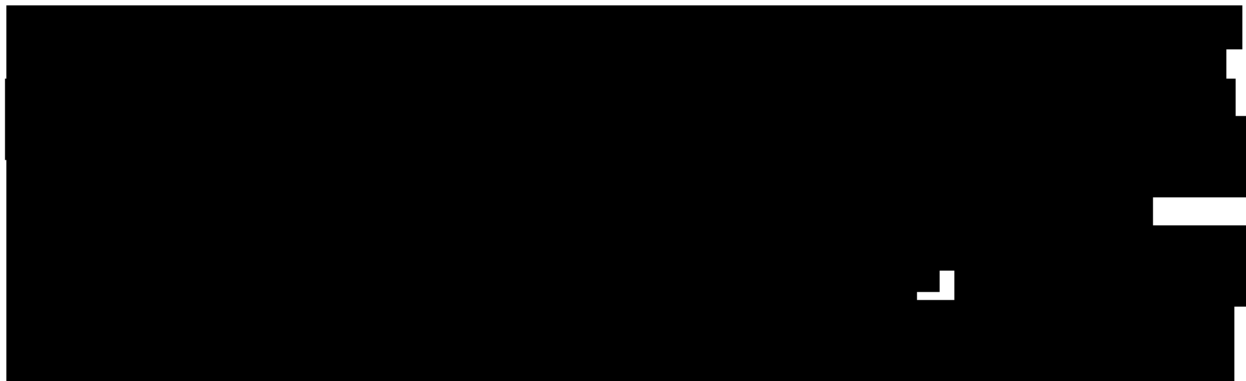
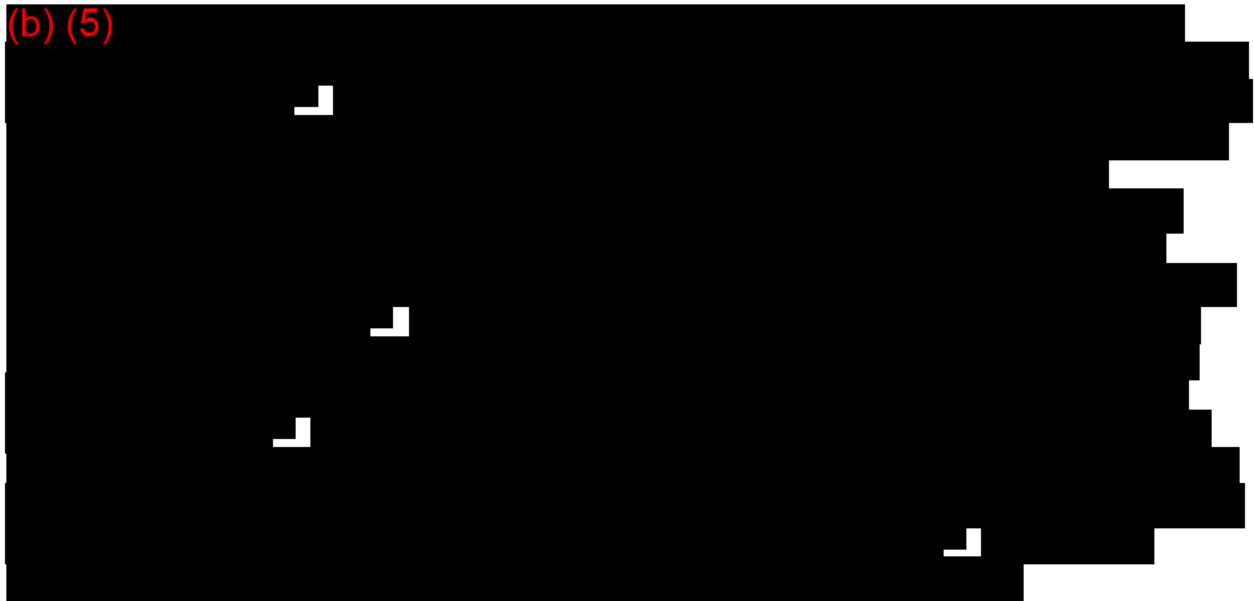
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(b) (5)



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(b) (5) [REDACTED]

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[REDACTED]

(b) (5)

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[REDACTED]


(b) (5)

A large rectangular area of the document is completely redacted with black ink, covering approximately the top half of the page's content. The redaction starts below the header and extends down to just above the footer area.

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A redacted area at the bottom of the page, consisting of several lines of text that have been completely obscured by black ink. The redaction covers the bottom third of the page's content area.

(b) (5)



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(b) (5)

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(b) (5) [Redacted text block]

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(b) (5) [Redacted]

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[Redacted]

(b) (5)  
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[REDACTED]

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[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]


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[REDACTED]

(b) (5)



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(b) (5) [REDACTED]

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[REDACTED]

M-

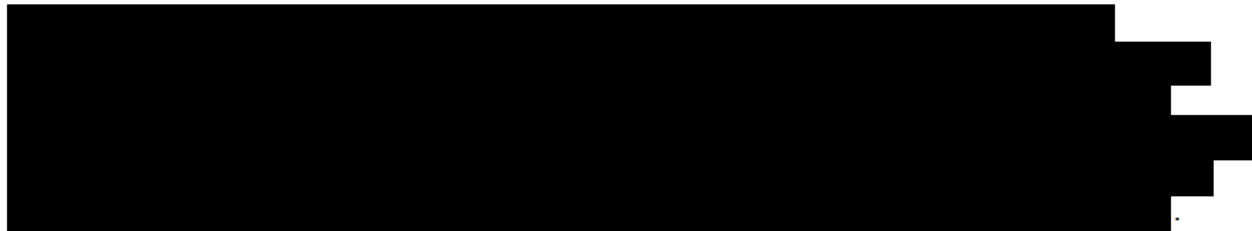
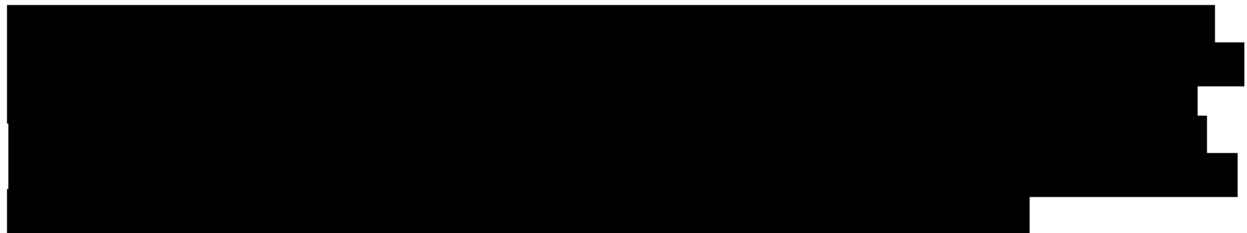
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

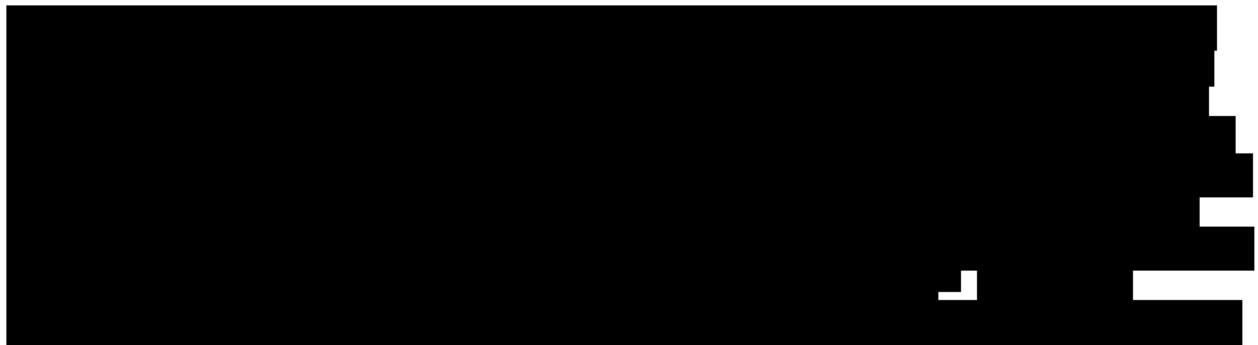
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[REDACTED]





(b) (5)



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(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

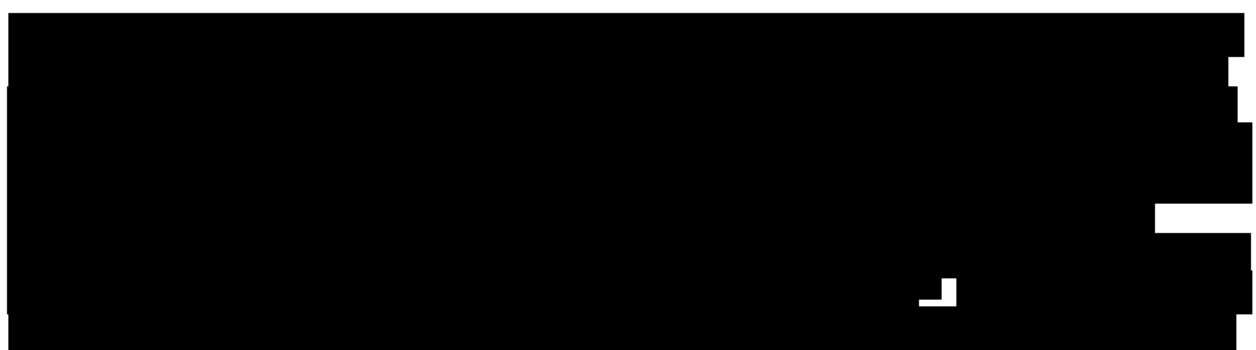

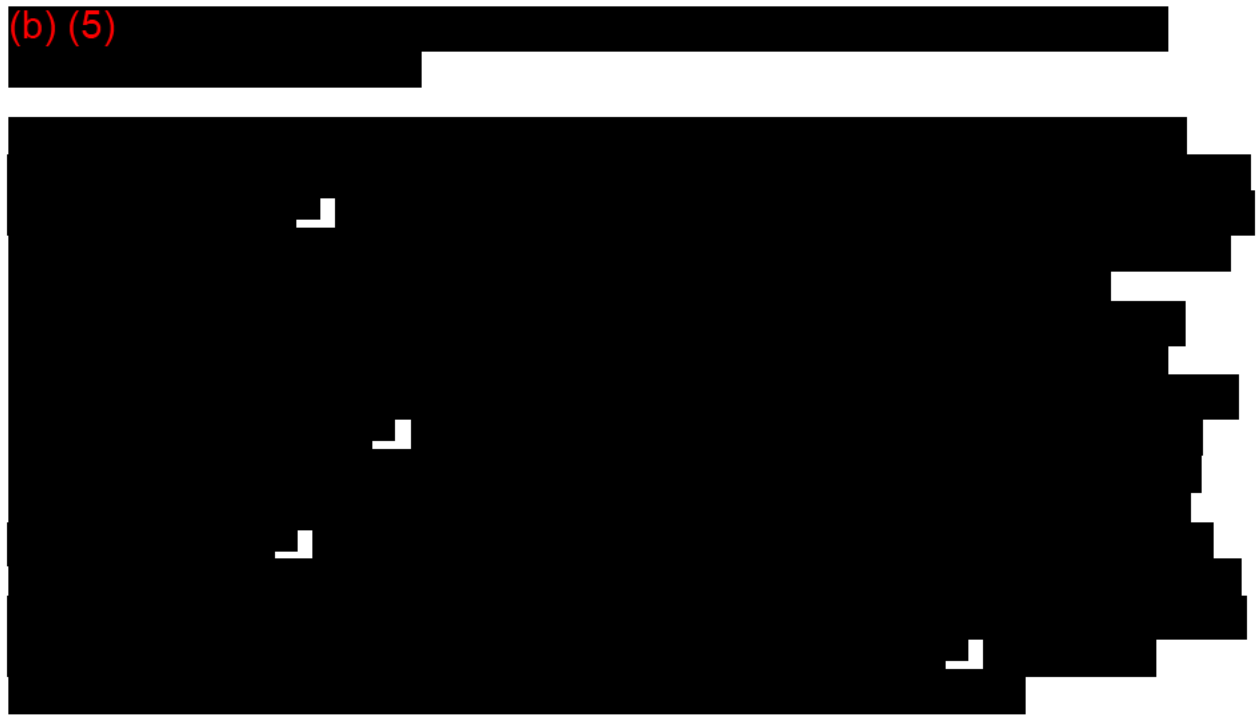
[REDACTED]

[REDACTED]

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[REDACTED]

(b) (5)



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(b) (5) [Redacted]

[Redacted]

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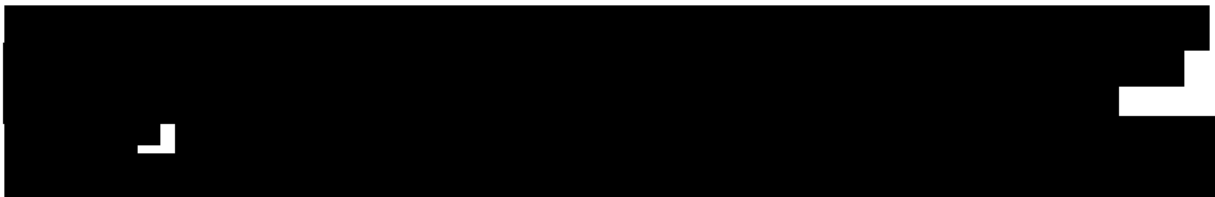
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[Redacted]

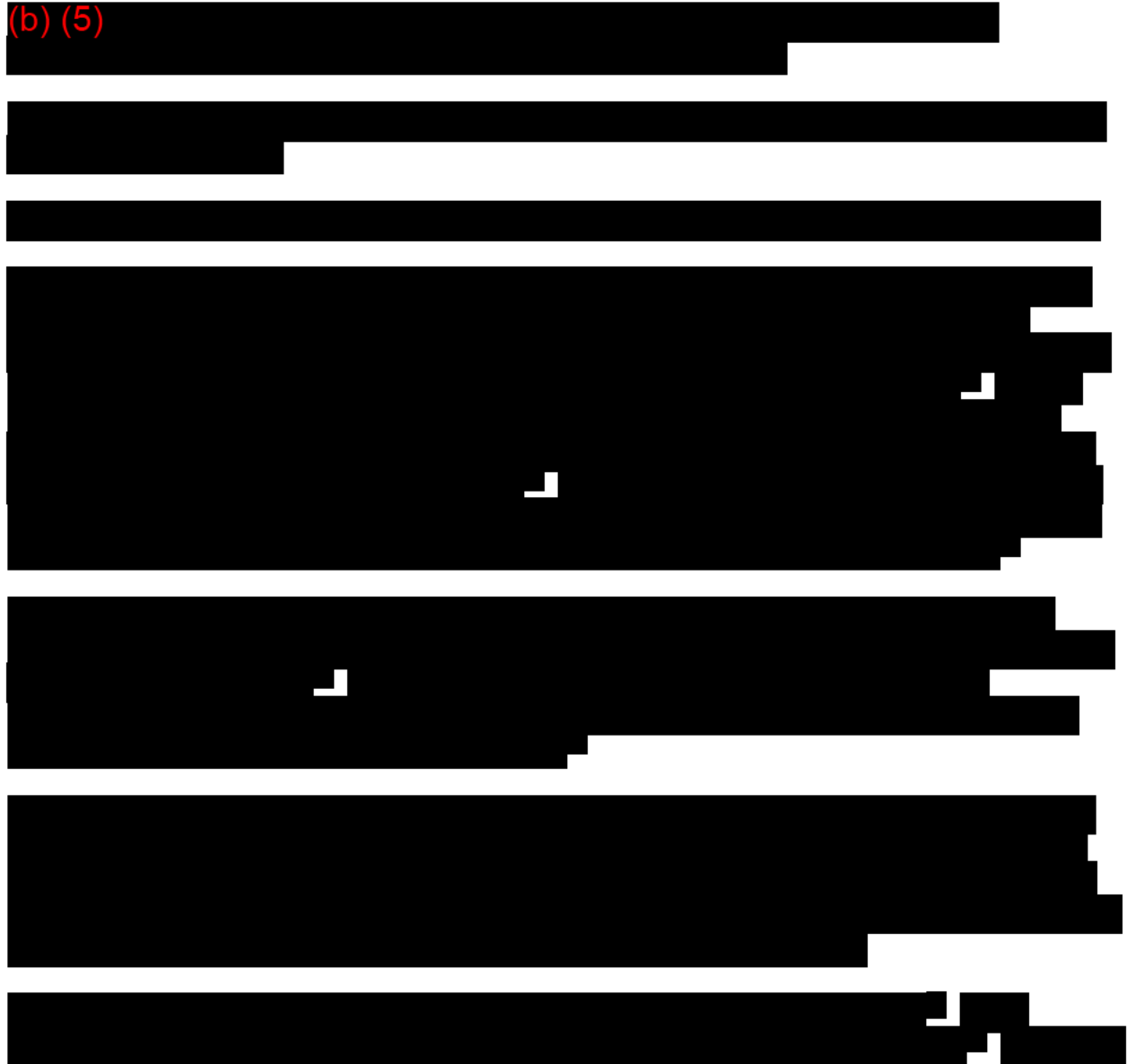
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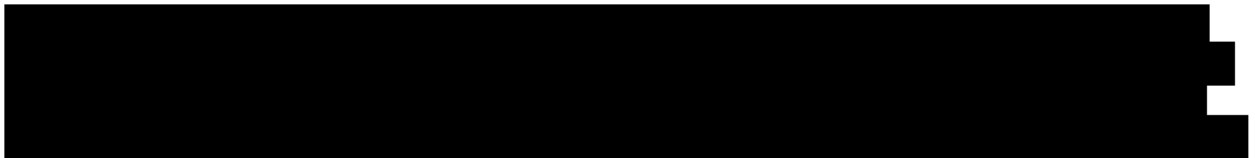
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(b) (5) [REDACTED]

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(b) (5) [REDACTED]

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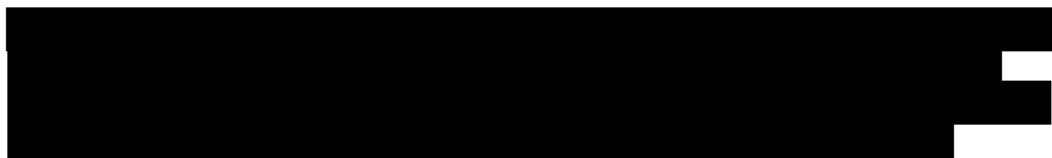
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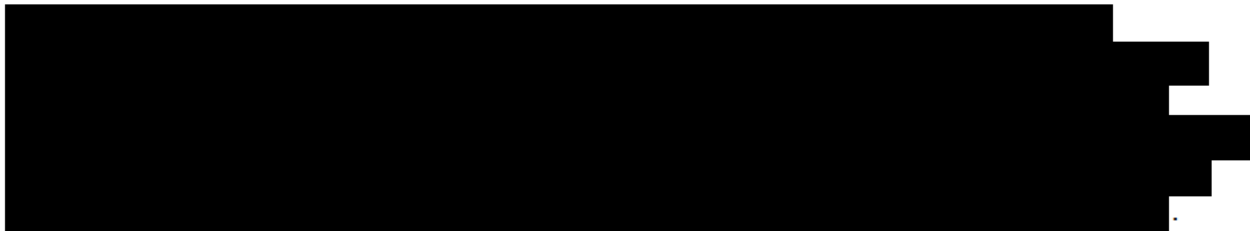
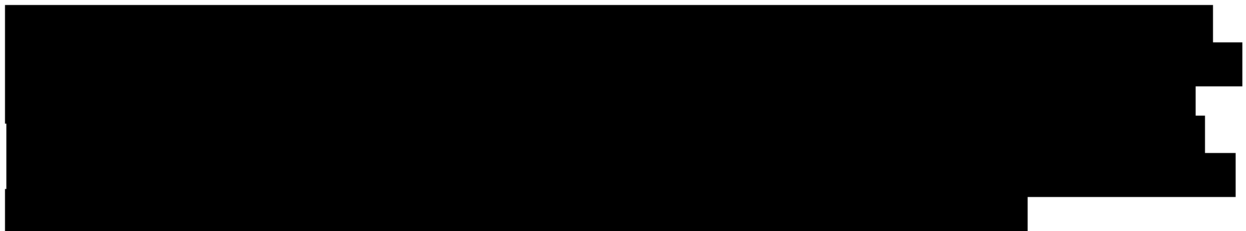
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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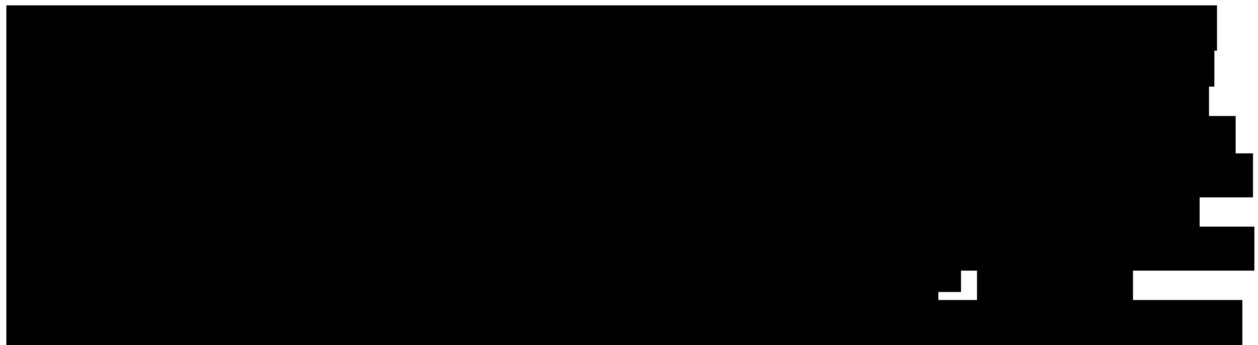
(b) (5)

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A smaller rectangular area at the bottom of the page content is redacted with black ink. It is located below a horizontal line that separates the main body of text from the footer. The redaction is solid black, obscuring all text within this region.

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(b) (5) [REDACTED]

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(b) (5)

[REDACTED]

[REDACTED]

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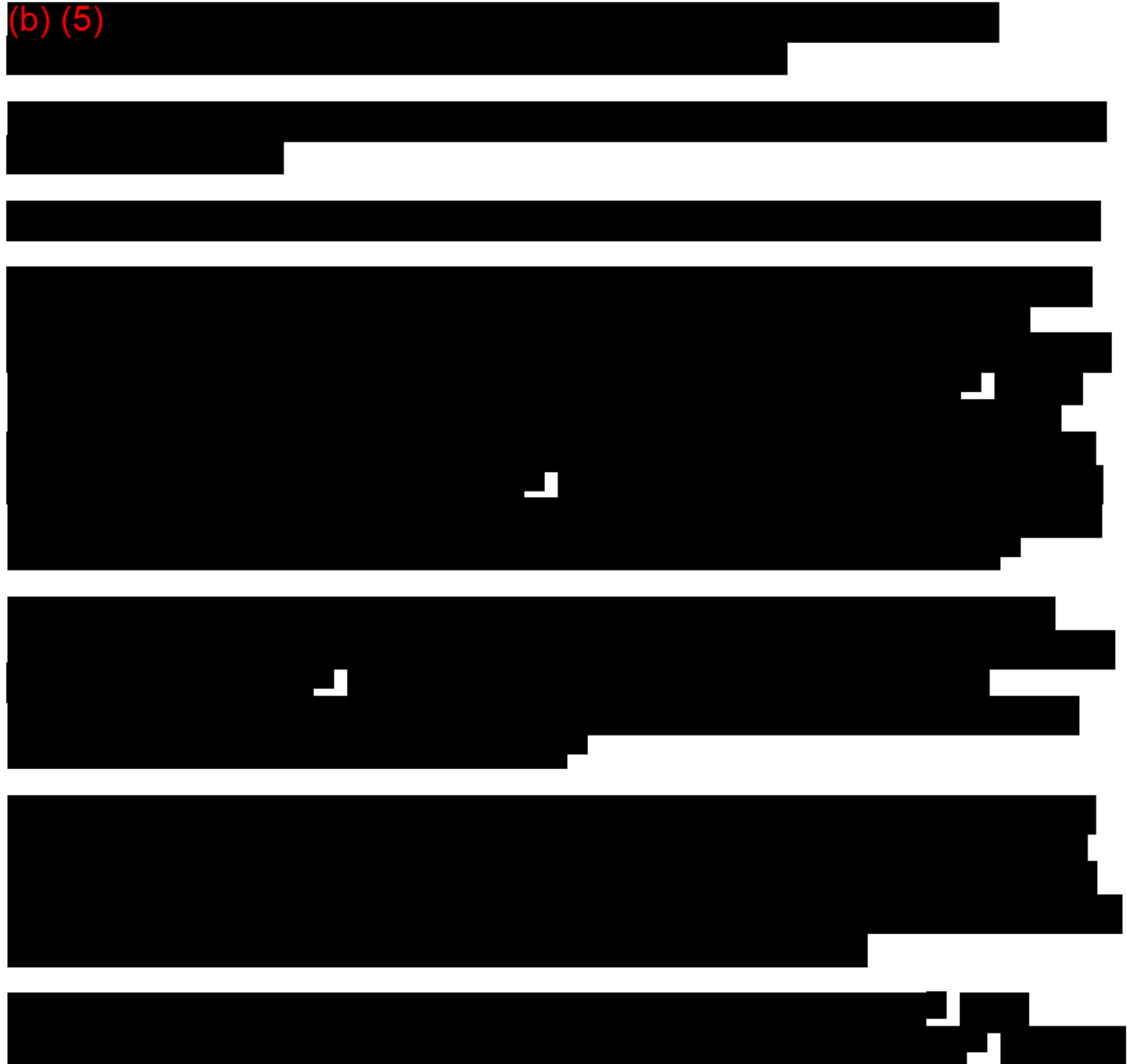
[REDACTED]

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(b) (5)



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(b) (5) [REDACTED]

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- [REDACTED]


[REDACTED]

[REDACTED]

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[REDACTED]

(b) (5)



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(b) (5)

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# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:36 AM

# Conversation Contents

## Twin Metals

### Attachments:

/6. Twin Metals/4.1 Twin Metals Talking Points (short version).docx  
/6. Twin Metals/4.2 2017.12.15 clean Twin Metals - Talking points\_Q&A.docx  
/6. Twin Metals/5.1 Twin Metals Talking Points (short version).docx  
/6. Twin Metals/5.2 2017.12.15 clean Twin Metals - Talking points\_Q&A.docx

## "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>

---

**From:** "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>  
**Sent:** Mon Dec 18 2017 13:23:19 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, "Collier, Briana" <briana.collier@sol.doi.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**CC:** "Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>, "Duffy, Sean C. (ENRD)" <Sean.C.Duffy@usdoj.gov>  
**Subject:** Twin Metals

Hi Karen-

You mentioned that the issuance of a new M-Opinion is imminent. Would you let us know when the new opinion is released?

Thanks very much,

Marissa

---

Marissa A. Piropato | Environment & Natural Resources Division | U.S. Department of Justice  
[marissa.piropato@usdoj.gov](mailto:marissa.piropato@usdoj.gov) | tel: 202.305.0470 | fax: 202.305-0506  
mail: P.O. Box 7611 | Washington, D.C. 20044-7611  
overnight delivery: Patrick Henry Building—3rd Floor | 601 D Street, NW | Washington, DC 20004

---

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Mon Dec 18 2017 17:07:58 GMT-0700 (MST)  
**To:** "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>  
"Collier, Briana" <briana.collier@sol.doi.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>, "Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>, "Duffy, Sean C. (ENRD)"

<Sean.C.Duffy@usdoj.gov>

**Subject:**

Re: Twin Metals

Hi Marissa, I'll let you know when it's signed. My understanding is that it may be signed this coming Friday. It was not signed last Friday, as we first expected. --Karen

On Mon, Dec 18, 2017 at 3:23 PM, Piropato, Marissa (ENRD) <[Marissa.Piropato@usdoj.gov](mailto:Marissa.Piropato@usdoj.gov)> wrote:

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Marissa

---

Marissa A. Piropato | Environment & Natural Resources Division | U.S. Department of Justice  
[marissa.piropato@usdoj.gov](mailto:marissa.piropato@usdoj.gov) | tel: 202.305.0470 | fax: 202.305-0506  
mail: P.O. Box 7611 | Washington, D.C. 20044-7611  
overnight delivery: Patrick Henry [Building—3rd Floor | 601 D Street, NW | Washington, DC 20004](#)

---

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**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

---

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Tue Dec 19 2017 08:22:12 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**CC:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Twin Metals

Hi Karen,

Justin Katusak called me yesterday and also asked for a heads up as to when the M-Opinion will be signed on behalf of BLM WO-100. He also asked if Brian Steed and Mike Nedd could see the opinion ahead of its release so that they will know what it says. I let him know that I would pass the request on.

Thank you,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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recipient or the employee or agent responsible for delivery of this email to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies.

On Mon, Dec 18, 2017 at 5:07 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
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Marissa A. Piropato | Environment & Natural Resources Division | U.S. Department of Justice  
[marissa.piropato@usdoj.gov](mailto:marissa.piropato@usdoj.gov) | tel: 202.305.0470 | fax: 202.305-0506  
mail: P.O. Box 7611 | Washington, D.C. 20044-7611  
overnight delivery: Patrick Henry [Building—3rd Floor | 601 D Street, NW | Washington, DC 20004](#)

---

## **"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**

---

**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Wed Dec 20 2017 15:15:59 GMT-0700 (MST)  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Fwd: Twin Metals  
**Attachments:** Twin Metals Talking Points (short version).docx 2017.12.15 clean  
Twin Metals - Talking points\_Q&A.docx

----- Forwarded message -----

From: **Lawkowski, Gary** <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
Date: Wed, Dec 20, 2017 at 5:13 PM  
Subject: Re: Twin Metals  
To: Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>  
Cc: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, "Jorjani, Daniel" <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)>

Please find attached a short version of talking points, as well as a longer version that includes some question and answer on the Twin Metals opinion.

One thing you all may want to note -- the Forest Service has indicated that they believe there



are potentially cobalt and platinum deposits underneath Superior National Forest (<https://www.fs.usda.gov/detail/superior/landmanagement/resourcemanagement/?cid=fseprd507250>). Cobalt and platinum are on the list of 23 critical minerals released by USGS earlier this week (<https://www.usgs.gov/news/critical-minerals-united-states>).

Sincerely,

Gary Lawkowski

On Wed, Dec 20, 2017 at 2:43 PM, Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)> wrote:  
Thanks Jack!

Sent from my iPhone

On Dec 20, 2017, at 2:40 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

Yep, we're working on it and should have the talking points to you later today.

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On Dec 20, 2017, at 2:36 PM, Jorjani, Daniel <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)> wrote:

Russ - Jack is your go-to guy on this one.

Jack - Please have DMR follow-up with Russ re talking points etc.



**Daniel H. Jorjani**  
Principal Deputy Solicitor  
U.S. Department of the Interior  
Main Interior Building, Suite 6356  
' 202-219-3861 (Voice)  
(b) (6) (Cell)  
[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)

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On Wed, Dec 20, 2017 at 2:33 PM, Newell, Russell  
<[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)> wrote:

Hi Gary, Dan - got anything on Twin Metals you can send along?

Russell Newell  
Deputy Director of Communications  
U.S. Department of the Interior  
(202) 208-6232  
@Interior

--  
Gary Lawkowski  
Counselor to the Solicitor  
Department of the Interior  
[Gary.Lawkowski@sol.doi.gov](mailto:Gary.Lawkowski@sol.doi.gov)  
202-208-7340

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 09:07:09 GMT-0700 (MST)  
**To:** Beverly Winston <bwinston@blm.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Jeff Krauss <jkrauss@blm.gov>, Mitchell Leverette <mleveret@blm.gov>  
**Subject:** Fwd: Twin Metals  
**Attachments:** Twin Metals Talking Points (short version).docx 2017.12.15 clean  
Twin Metals - Talking points\_Q&A.docx

Hi Bev, Attached below are talking points and Q & A that SOL prepared and supplied to Russell Newell in DOI comms. Thank you, Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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**Date:** Wed, Dec 20, 2017 at 3:15 PM  
**Subject:** Fwd: Twin Metals  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

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Date: Wed, Dec 20, 2017 at 5:13 PM  
Subject: Re: Twin Metals  
To: Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>  
Cc: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, "Jorjani, Daniel" <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)>

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Main Interior Building, Suite 6356  
' 202-219-3861 (Voice)

 (b) (6) (Cell)

 [daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)

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@Interior

--

*Gary Lawkowski*  
*Counselor to the Solicitor*  
*Department of the Interior*  
[Gary.Lawkowski@sol.doi.gov](mailto:Gary.Lawkowski@sol.doi.gov)  
202-208-7340

---

**"Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>**

**From:** "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**Sent:** Thu Dec 21 2017 09:13:15 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Jeff Krauss  
<[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>, Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>,  
**CC:** "Newell, Russell" <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>  
**Subject:** Re: Twin Metals

Great. Thank you.

I sent Russell (cc'd here) a draft news release this morning for possible distribution in the state of Minnesota. Brian and Mike have not signed off on it yet.

There is a meeting later today where, with hope, we'll get some further direction.

Thanks for you work on this.

Bev

On Thu, Dec 21, 2017 at 11:07 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Hi Bev, Attached below are talking points and Q & A that SOL prepared and supplied to Russell Newell in DOI comms. Thank you, Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800

Albuquerque, NM 87102

Phone: (202) 208-4853

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Date: Wed, Dec 20, 2017 at 3:15 PM

Subject: Fwd: Twin Metals

To: Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

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From: **Lawkowski, Gary** <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>

Date: Wed, Dec 20, 2017 at 5:13 PM

Subject: Re: Twin Metals

To: Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>

Cc: "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, "Jorjani, Daniel" <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)>

Please find attached a short version of talking points, as well as a longer version that includes some question and answer on the Twin Metals opinion.

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Sincerely,

Gary Lawkowski

On Wed, Dec 20, 2017 at 2:43 PM, Russell Newell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)> wrote:  
Thanks Jack!

Sent from my iPhone

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Jack - Please have DMR follow-up with Russ re talking points etc.



**Daniel H. Jorjani**  
Principal Deputy Solicitor  
U.S. Department of the Interior  
Main Interior Building, Suite 6356  
' 202-219-3861 (Voice)  
(b) (6) (Cell)  
[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)

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Deputy Director of Communications  
U.S. Department of the Interior  
(202) 208-6232  
@Interior

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Counselor to the Solicitor  
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202-208-7340

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Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**"Newell, Russell" <russell\_newell@ios.doi.gov>**

---

**From:** "Newell, Russell" <russell\_newell@ios.doi.gov>  
**Sent:** Thu Dec 21 2017 09:18:06 GMT-0700 (MST)  
**To:** "Winston, Beverly" <bwinston@blm.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Jeff Krauss <jkrauss@blm.gov>, Mitchell Leverette <mleveret@blm.gov>  
**Subject:** Re: Twin Metals

I have just learned (30 seconds ago) that we are now not issuing any release on this. Solicitor is drafting an if-asked statement right now.

Bev, I'm so sorry about the wasted work on the release. As of this morning, that was the plan.

Russell Newell  
Deputy Director of Communications  
U.S. Department of the Interior  
(202) 208-6232  
@Interior

On Thu, Dec 21, 2017 at 11:13 AM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

Great. Thank you.

I sent Russell (cc'd here) a draft news release this morning for possible distribution in the state of Minnesota. Brian and Mike have not signed off on it yet.

There is a meeting later today where, with hope, we'll get some further direction.

Thanks for you work on this.

Bev

On Thu, Dec 21, 2017 at 11:07 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Hi Bev, Attached below are talking points and Q & A that SOL prepared and supplied to Russell Newell in DOI comms. Thank you, Briana

Briana Collier  
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**Date:** Wed, Dec 20, 2017 at 3:15 PM  
**Subject:** Fwd: Twin Metals  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

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**Sent:** Thu Dec 21 2017 09:19:28 GMT-0700 (MST)  
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**Subject:**

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Mitch

**Mitchell Leverette**

Acting State Director  
Eastern States  
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202-912-7702 (w)

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**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 10:28:41 GMT-0700 (MST)  
**To:** "Leverette, Mitchell" <mleveret@blm.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, Beverly Winston <bwinston@blm.gov>, Jeff Krauss <jkrauss@blm.gov>  
**Subject:** Re: Twin Metals

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**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
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(b) (6) (Cell)  
[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)

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On Wed, Dec 20, 2017 at 2:33 PM, Newell, Russell  
<[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)> wrote:

Hi Gary, Dan - got anything on Twin Metals you can send along?

Russell Newell  
Deputy Director of Communications  
U.S. Department of the Interior  
(202) 208-6232  
@Interior

--  
Gary Lawkowski  
Counselor to the Solicitor  
Department of the Interior  
[Gary.Lawkowski@sol.doi.gov](mailto:Gary.Lawkowski@sol.doi.gov)  
202-208-7340

---

**"Duffy, Sean C. (ENRD)" <[Sean.C.Duffy@usdoj.gov](mailto:Sean.C.Duffy@usdoj.gov)>**

**From:** "Duffy, Sean C. (ENRD)" <[Sean.C.Duffy@usdoj.gov](mailto:Sean.C.Duffy@usdoj.gov)>  
**Sent:** Thu Dec 21 2017 14:59:22 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, "McNeer, Richard"

<richard.mcneer@sol.doi.gov>

**CC:**

"Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>,  
"Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>

**Subject:**

RE: Twin Metals

Karen, Richard, and Brianna:

Thank you for keeping us apprised. We spoke to the AUSA today who reiterated the view in their office that (b) (5)

Please let us know if you have any concerns with this approach. We'll circulate draft notice language for review and comments soon.

A few questions:

1. Is the M-Op going to be published tomorrow?
2. If so, do you know what time it may be published? So that we file notice during the same business day, our hope is that it is published earlier rather than later in the day.

Feel free to give me a call if you have any questions.

Thank you,  
Sean

---

Sean C. Duffy  
Environment & Natural Resources Division  
U.S. Department of Justice  
Natural Resources Section  
(202) 305-0445|[sean.c.duffy@usdoj.gov](mailto:sean.c.duffy@usdoj.gov)

---

**From:** Hawbecker, Karen [mailto:karen.hawbecker@sol.doi.gov]  
**Sent:** Monday, December 18, 2017 7:08 PM  
**To:** Piropato, Marissa (ENRD) <MPiropato@ENRD.USDOJ.GOV>  
**Cc:** Collier, Briana <briana.collier@sol.doi.gov>; McNeer, Richard <richard.mcneer@sol.doi.gov>; Boronow, Clare (ENRD) <CBoronow@ENRD.USDOJ.GOV>; Duffy, Sean C. (ENRD) <SDuffy@ENRD.USDOJ.GOV>  
**Subject:** Re: Twin Metals

Hi Marissa, I'll let you know when it's signed. My understanding is that it may be signed this coming Friday. It was not signed last Friday, as we first expected. --Karen

On Mon, Dec 18, 2017 at 3:23 PM, Piropato, Marissa (ENRD) <[Marissa.Piropato@usdoj.gov](mailto:Marissa.Piropato@usdoj.gov)> wrote:

Hi Karen-

You mentioned that the issuance of a new M-Opinion is imminent. Would you let us know when the new opinion is released?

Thanks very much,

Marissa

---

Marissa A. Piropato | Environment & Natural Resources Division | U.S. Department of Justice

[marissa.piropato@usdoj.gov](mailto:marissa.piropato@usdoj.gov) | tel: 202.305.0470 | fax: 202.305-0506  
mail: P.O. Box 7611 | Washington, D.C. 20044-7611  
overnight delivery: Patrick Henry [Building—3rd Floor | 601 D Street, NW | Washington, DC 20004](#)

---

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 15:47:41 GMT-0700 (MST)  
**To:** "Duffy, Sean C. (ENRD)" <Sean.C.Duffy@usdoj.gov>  
"Collier, Briana" <briana.collier@sol.doi.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>, "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>, "Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>, Jack Haugrud <jack.haugrud@sol.doi.gov>  
**CC:**  
**Subject:** Re: Twin Metals

Sean, I've copied Jack on this email. We're checking with Dan Jorjani about filing a notice with the court tomorrow and we'll let you know what we learn. We expect the opinion to be signed tomorrow (Friday) sometime between 1-2 pm. We expect the opinion to be posted on the Solicitor's Office webpage at 6 pm. Given the time constraints, please send us draft notice language that we can share with Dan J. Thanks. --Karen

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Sean

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Sean C. Duffy  
Environment & Natural Resources Division  
U.S. Department of Justice  
Natural Resources Section  
(202) 305-0445 | [sean.c.duffy@usdoj.gov](mailto:sean.c.duffy@usdoj.gov)

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**From:** Hawbecker, Karen [mailto:[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)]  
**Sent:** Monday, December 18, 2017 7:08 PM  
**To:** Piropato, Marissa (ENRD) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>  
**Cc:** Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>; McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>  
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[marissa.piropato@usdoj.gov](mailto:marissa.piropato@usdoj.gov) | tel: 202.305.0470 | fax: 202.305-0506  
mail: P.O. Box 7611 | Washington, D.C. 20044-7611  
overnight delivery: Patrick Henry [Building](#)—[3rd Floor](#) | [601 D Street, NW](#) | [Washington, DC 20004](#)

---

## **"Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

---

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 15:52:05 GMT-0700 (MST)  
**To:** "Duffy, Sean C. (ENRD)" <[Sean.C.Duffy@usdoj.gov](mailto:Sean.C.Duffy@usdoj.gov)>  
"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, "Piropato, Marissa (ENRD)" <[Marissa.Piropato@usdoj.gov](mailto:Marissa.Piropato@usdoj.gov)>, "Boronow, Clare (ENRD)" <[Clare.Boronow@usdoj.gov](mailto:Clare.Boronow@usdoj.gov)>, Jack Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**CC:**  
**Subject:** Re: Twin Metals

Sean, Dan is okay with filing a notice tomorrow. It's going to be later in the day, as I mentioned, but at least Minnesota has a one hour time difference. Perhaps you could call the court's clerk to make sure the judge is aware as soon as it's posted on the webpage. --Karen

On Thu, Dec 21, 2017 at 5:47 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Sean, I've copied Jack on this email. We're checking with Dan Jorjani about filing a notice with the court tomorrow and we'll let you know what we learn. We expect the opinion to be signed tomorrow (Friday) sometime between 1-2 pm. We expect the opinion to be posted on the Solicitor's Office webpage at 6 pm. Given the time constraints, please send us draft notice language that we can share with Dan J. Thanks. --Karen

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**Cc:** Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>; McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>  
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Marissa

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Marissa A. Piropato | Environment & Natural Resources Division | U.S. Department of Justice  
[marissa.piropato@usdoj.gov](mailto:marissa.piropato@usdoj.gov) | tel: 202.305.0470 | fax: 202.305-0506

mail: P.O. Box 7611 | Washington, D.C. 20044-7611

overnight delivery: Patrick Henry [Building](#)—[3rd Floor](#) | [601 D Street, NW](#) | [Washington, DC 20004](#)

---

**Twin Metals Talking Points**

- (b) (5) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

(b) (5) [REDACTED]



(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5) [REDACTED]







[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)



**Twin Metals Talking Points**

- (b) (5) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

(b) (5) [REDACTED]

(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5) [REDACTED]


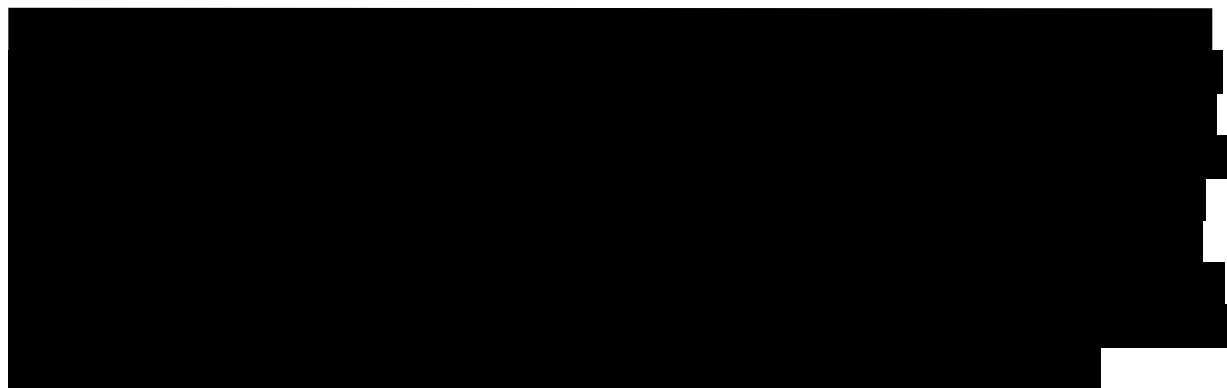
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)




# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:36 AM

# Conversation Contents

## Posting an M-Opinion on the SOL website

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 15:59:26 GMT-0700 (MST)  
**To:** Jason Earwood <jason.earwood@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Posting an M-Opinion on the SOL website

Hi Jason, Will you be in on Friday to post an M-Opinion on the website?

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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**"Earwood, Jason" <jason.earwood@sol.doi.gov>**

---

**From:** "Earwood, Jason" <jason.earwood@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 16:30:17 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Posting an M-Opinion on the SOL website

Briana,

Both Jermaine Smith and I are on leave Friday, but one of us will get it posted that day (depending on what we are doing and where we are, it will take some or more time). I can do it remotely from my house, but will not be there all day. Send it to both of us by email.

Is this an end of the day, ink not even dry when finished kind of thing, or can you go ahead and provide it to us today/tomorrow? If you need it posted at a certain time Friday, we could plan who can push the button at that time.

Thanks,

Jason Earwood  
Finance and Admin Services  
Office of the Solicitor  
(202) 208-7406  
(b) (6) mobile

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On Wed, Dec 20, 2017 at 5:59 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
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Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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**"Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

---

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Wed Dec 20 2017 16:47:21 GMT-0700 (MST)  
**To:** "Earwood, Jason" <[jason.earwood@sol.doi.gov](mailto:jason.earwood@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Re: Posting an M-Opinion on the SOL website

Hi Jason, My understanding is that it will be signed at 2 pm on Friday. --Karen

On Wed, Dec 20, 2017 at 6:30 PM, Earwood, Jason <[jason.earwood@sol.doi.gov](mailto:jason.earwood@sol.doi.gov)> wrote:  
Briana,

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---

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**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 14:07:16 GMT-0700 (MST)  
**To:** "Earwood, Jason" <[jason.earwood@sol.doi.gov](mailto:jason.earwood@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Re: Posting an M-Opinion on the SOL website

Jason, I'm writing to confirm that it still looks Dan J will sign this M-Opinion at 1 pm tomorrow with a goal of having it posted on the web page at 4 pm. BLM is gearing toward that time frame for notifying congressional delegation members. Do you know what your schedule looks like in the afternoon tomorrow? How much time does it take to post an M-Opinion? In order for it to be posted by 4 pm, when do you need to begin working on the posting process? Thanks. --Karen

On Wed, Dec 20, 2017 at 6:47 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Hi Jason, My understanding is that it will be signed at 2 pm on Friday. --Karen

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Office of the Solicitor  
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(b) (6) mobile

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---

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**From:** "Earwood, Jason" <[jason.earwood@sol.doi.gov](mailto:jason.earwood@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 14:29:39 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Jermaine Smith <[jermaine.smith@sol.doi.gov](mailto:jermaine.smith@sol.doi.gov)>  
**Subject:** Re: Posting an M-Opinion on the SOL website

Karen,

It would be good to have an hour to complete it.

Marigrace contact Jermaine and I earlier and said to plan to post two M-Opinions at 6PM, but that she would try to send them ahead of time so the page may be

prepped. It would be helpful to do both at the same time since an Excel listing and the page are updated with the latest listing. Hopefully 6PM can work for the one you are preparing? Maybe discuss that with her if not.

Thanks,

Jason Earwood  
Finance and Admin Services  
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(b) (6) mobile

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On Wed, Dec 20, 2017 at 6:47 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Hi Jason, My understanding is that it will be signed at 2 pm on Friday. --Karen

On Wed, Dec 20, 2017 at 6:30 PM, Earwood, Jason <[jason.earwood@sol.doi.gov](mailto:jason.earwood@sol.doi.gov)> wrote:

Briana,

Both Jermaine Smith and I are on leave Friday, but one of us will get it posted that day (depending on what we are doing and where we are, it will take some or more time). I can do it remotely from my house, but will not be there all day. Send it to both of us by email.

Is this an end of the day, ink not even dry when finished kind of thing, or can you go ahead and provide it to us today/tomorrow? If you need it posted at a certain time Friday, we could plan who can push the button at that time.

Thanks,

Jason Earwood  
Finance and Admin Services  
Office of the Solicitor  
(202) 208-7406  
(b) (6) mobile

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Briana Collier

Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
[505 Marquette Ave., NW Ste.1800](#)  
[Albuquerque, NM 87102](#)

Phone: (202) 208-4853

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---

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 14:39:46 GMT-0700 (MST)  
**To:** "Earwood, Jason" <jason.earwood@sol.doi.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, Jermaine Smith <jermaine.smith@sol.doi.gov>  
**Subject:** Re: Posting an M-Opinion on the SOL website

Jason, Follow what Mari Grace says. --Karen

On Thu, Dec 21, 2017 at 4:29 PM, Earwood, Jason <[jason.earwood@sol.doi.gov](mailto:jason.earwood@sol.doi.gov)> wrote:  
Karen,

It would be good to have an hour to complete it.

Marigrace contact Jermaine and I earlier and said to plan to post two M-Opinions at 6PM, but that she would try to send them ahead of time so the page may be prepped. It would be helpful to do both at the same time since an Excel listing and the page are updated with the latest listing. Hopefully 6PM can work for the one you are preparing? Maybe discuss that with her if not.

Thanks,

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Office of the Solicitor  
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(b) (6) mobile

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**Label: "Twin Metals/TMM FOIA  
request/SOL-2018-00089/Part 1"**

**Created by:** [briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label: 112 (20 conversations)

Created: 08-07-2018 at 10:36 AM

## Conversation Contents

### Twin Metals M-Opinion

#### Attachments:

/8. Twin Metals M-Opinion/1.1 2017.12.06 Twin Metals -- Draft Final Clean.docx  
/8. Twin Metals M-Opinion/5.1 2017.12.07 Twin Metals -- Draft Final Clean + bwc (OGC).docx  
/8. Twin Metals M-Opinion/11.1 2017.12.08 Twin Metals -- Draft Final Clean.docx  
/8. Twin Metals M-Opinion/11.2 2017.12.08 Twin Metals -- Draft Final Redline with OGC response.docx  
/8. Twin Metals M-Opinion/13.1 2017.12.08 Twin Metals -- Draft Final Clean.docx

---

### "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Thu Dec 07 2017 09:48:10 GMT-0700 (MST)  
**To:** Daniel Jorjani <daniel.jorjani@sol.doi.gov>  
Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Mariagrazia Caminiti <Marigrace.Caminiti@sol.doi.gov>  
**CC:**  
**Subject:** Twin Metals M-Opinion  
**Attachments:** 2017.12.06 Twin Metals -- Draft Final Clean.docx

Dan: Attached is the proposed final M-Opinion that would reverse and withdraw M-37036.  
Jack

---

### Daniel Jorjani <daniel.jorjani@sol.doi.gov>

**From:** Daniel Jorjani <daniel.jorjani@sol.doi.gov>  
**Sent:** Thu Dec 07 2017 10:05:15 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Mariagrazia Caminiti <Marigrace.Caminiti@sol.doi.gov>  
**CC:**  
**Subject:** Re: Twin Metals M-Opinion

Thank you.

Sent from my iPhone

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**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Thu Dec 07 2017 11:20:37 GMT-0700 (MST)  
**To:** Daniel Jorjani <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)>  
Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Gary Lawkowski <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Mariagrazia Caminiti <[Marigrace.Caminiti@sol.doi.gov](mailto:Marigrace.Caminiti@sol.doi.gov)>  
**CC:**  
**Subject:** Re: Twin Metals M-Opinion

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**From:** Daniel Jorjani <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)>  
**Sent:** Thu Dec 07 2017 12:22:15 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Gary Lawkowski <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Mariagrazia Caminiti  
**CC:**

**Subject:**

<Marigrace.Caminiti@sol.doi.gov>

Re: Twin Metals M-Opinion



**Daniel H. Jorjani**  
**U.S. Department of the**  
**Interior**  
**Acting Solicitor & Principal**  
**Deputy Solicitor**  
**Main Interior Building, Suite**  
**6356**

' 202-219-3861 (Voice)

(b) (6) (Cell)

[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)

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**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

**From:**

"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

**Sent:**

Thu Dec 07 2017 17:12:46 GMT-0700 (MST)

**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Opinion  
**Attachments:** 2017.12.07 Twin Metals -- Draft Final Clean + bwc (OGC).docx

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(b) (5)  
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Please let me know if I can help with the final push on this.

Thank you,  
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Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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**U.S. Department of the Interior**  
**Acting Solicitor & Principal Deputy Solicitor**  
**Main Interior Building, Suite 6356**  
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**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Thu Dec 07 2017 17:24:46 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Gary Lawkowski <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
**CC:**  
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**From:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 07:02:44 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Richard McNeer  
**CC:** <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Gary Lawkowski  
<[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
**Subject:** Re: Twin Metals M-Opinion

I have reviewed the changes that Briana made in response to Pamela's comments. I am okay with the changes, with the understanding that we're waiting on Ag with regard to footnote 18.

I will be leaving for a dental appointment shortly, but will check back as soon as I return.

Sent from my iPad

On Dec 7, 2017, at 7:24 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

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<2017.12.06 Twin Metals -- Draft Final Clean.docx>

**"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**

---

**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 07:52:47 GMT-0700 (MST)  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Richard McNeer  
**CC:** <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Gary Lawkowski  
<[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
**Subject:** Re: Twin Metals M-Opinion

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(b) (5)

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Please let me know if I can help with the final push on this.

Thank you,  
Briana

Briana Collier  
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Albuquerque, NM 87102

Phone: (202) 208-4853

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**Deputy Solicitor**  
**Main Interior Building, Suite**  
**6356**

**' 202-219-3861 (Voice)**

**(b) (6) Cell)**

**[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)**

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**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 08:20:18 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Gary Lawkowski <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
**CC:**  
**Subject:** Re: Twin Metals M-Opinion

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**6356**

**\* 202-219-3861 (Voice)**

**(b) (6) (Cell)**

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**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 08:27:59 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**CC:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard  
McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Gary Lawkowski  
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**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 10:19:05 GMT-0700 (MST)  
**To:** Daniel Jorjani <daniel.jorjani@sol.doi.gov>  
Mariagrazia Caminiti <Marigrace.Caminiti@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>  
**CC:**  
**Subject:** Twin Metals M-Opinion  
**Attachments:** 2017.12.08 Twin Metals -- Draft Final Clean.docx 2017.12.08 Twin Metals -- Draft Final Redline with OGC response.docx

Dan: Attached is the proposed Twin Metals' M-Opinion. I have also attached a redline version that shows the changes we made in response to ES comments. There are not many revisions. Most are edits to (b) (5)

(b) (5)

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Jack cc Marigrace, Briana, Karen, Gary, Richard

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 10:39:48 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
"Collier, Briana" <briana.collier@sol.doi.gov>, Richard McNeer  
<richard.mcneer@sol.doi.gov>, Gary Lawkowski  
<gary.lawkowski@sol.doi.gov>  
**Subject:** Re: Twin Metals M-Opinion

I'm back from the dentist and I just want to let you know that I like the footnote 18 language you used and the change to the "United States" right to impose new terms.

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**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 14:09:33 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Fwd: Twin Metals M-Opinion  
**Attachments:** 2017.12.08 Twin Metals -- Draft Final Clean.docx

----- Forwarded message -----

**From:** **Haugrud, Kevin** <jack.haugrud@sol.doi.gov>  
**Date:** Wed, Dec 20, 2017 at 2:50 PM  
**Subject:** Fwd: Twin Metals M-Opinion  
**To:** Brian Steed <bsteed@blm.gov>, Michael Nedd <mike\_nedd@blm.gov>, "Leverette, Mitchell" <Mitchell\_Leverette@blm.gov>  
**Cc:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>

Attorney Client Communication  
Attorney Work Product  
Predecisional  
DO NOT RELEASE

Brian, Mike, Mitch - Attached is a draft M-Opinion that would reverse an earlier Solicitor's Opinion and conclude that Twin Metals Minnesota is entitled to a third renewal of its two leases. The expectation is that once this M-Opinion is issued, the BLM would reinstate the old 2004 leases and restart the processing of the renewal application in conjunction with USDA. We can discuss this in more detail tomorrow, but wanted you to have the draft opinion ahead of time.

DRAFT – Privileged and Confidential  
December 6, 2017

M-

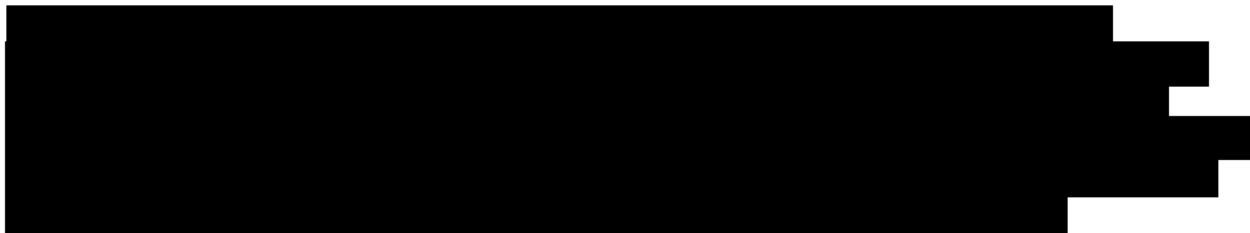
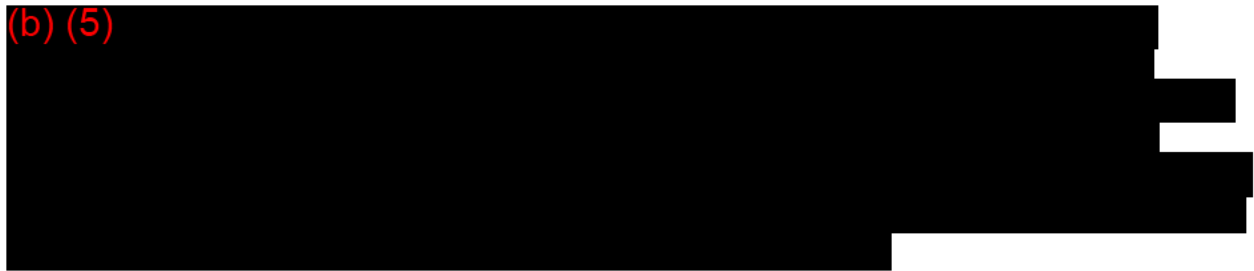
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]






[REDACTED]

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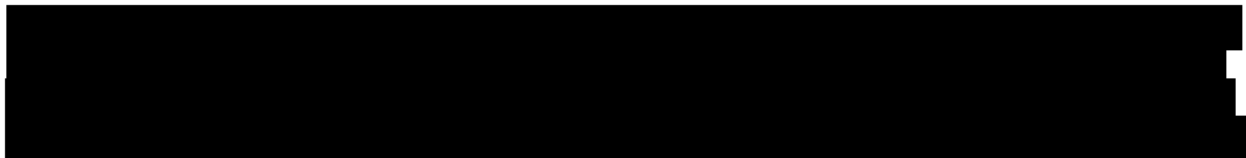
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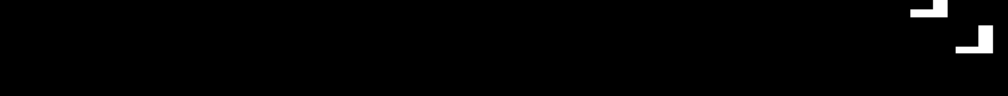
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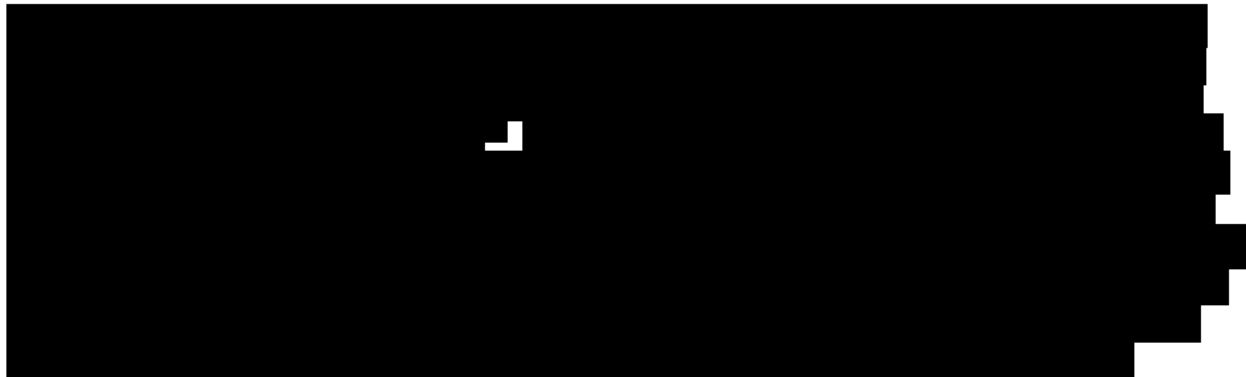
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(b) (5) [REDACTED]

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(b) (5) [Redacted]

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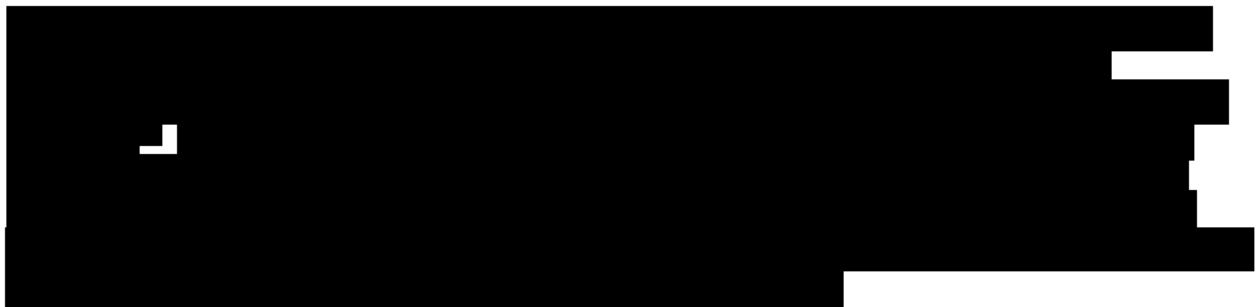
(b) (5)



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A block of text is redacted with black ink, spanning about two lines.



A large block of text is redacted with black ink, covering approximately five lines.



A block of text is redacted with black ink, spanning about one line.



A small block of text is redacted with black ink, covering about half a line.



A large block of text is redacted with black ink, covering approximately four lines.

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DRAFT – Privileged and Confidential  
December 6, 2017

M-

Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)

Commented [CBW1]: OGC's first suggestion was to (b) (5)

Commented [CBW2]: OGC's second comment (b) (5)

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Commented [CBW3]: (b) (5)

Commented [CBW4]: OGC's comment 3 suggested (b) (5)

Commented [CBW5]: OGC's comment 4 suggests (b) (5)

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**Commented [CBW7]:** Awaiting response from Ralph Linden for final language

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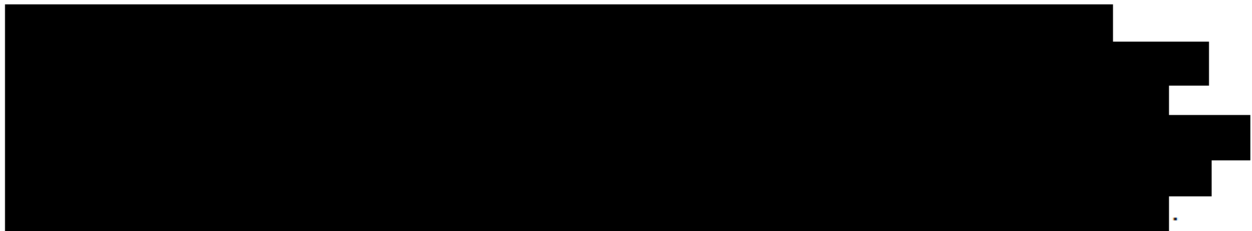
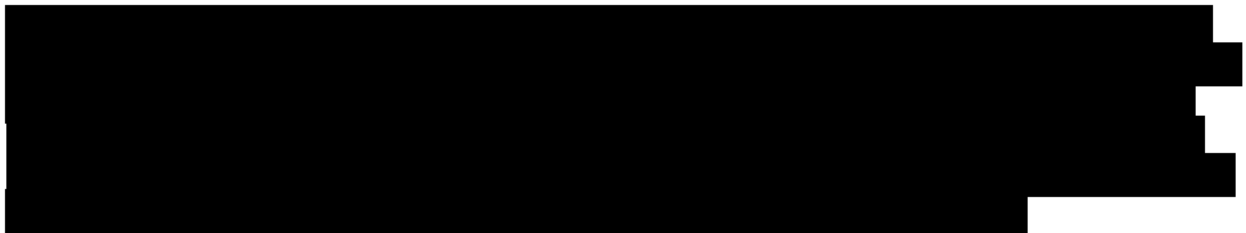
Memorandum

To: Director, Bureau of Land Management

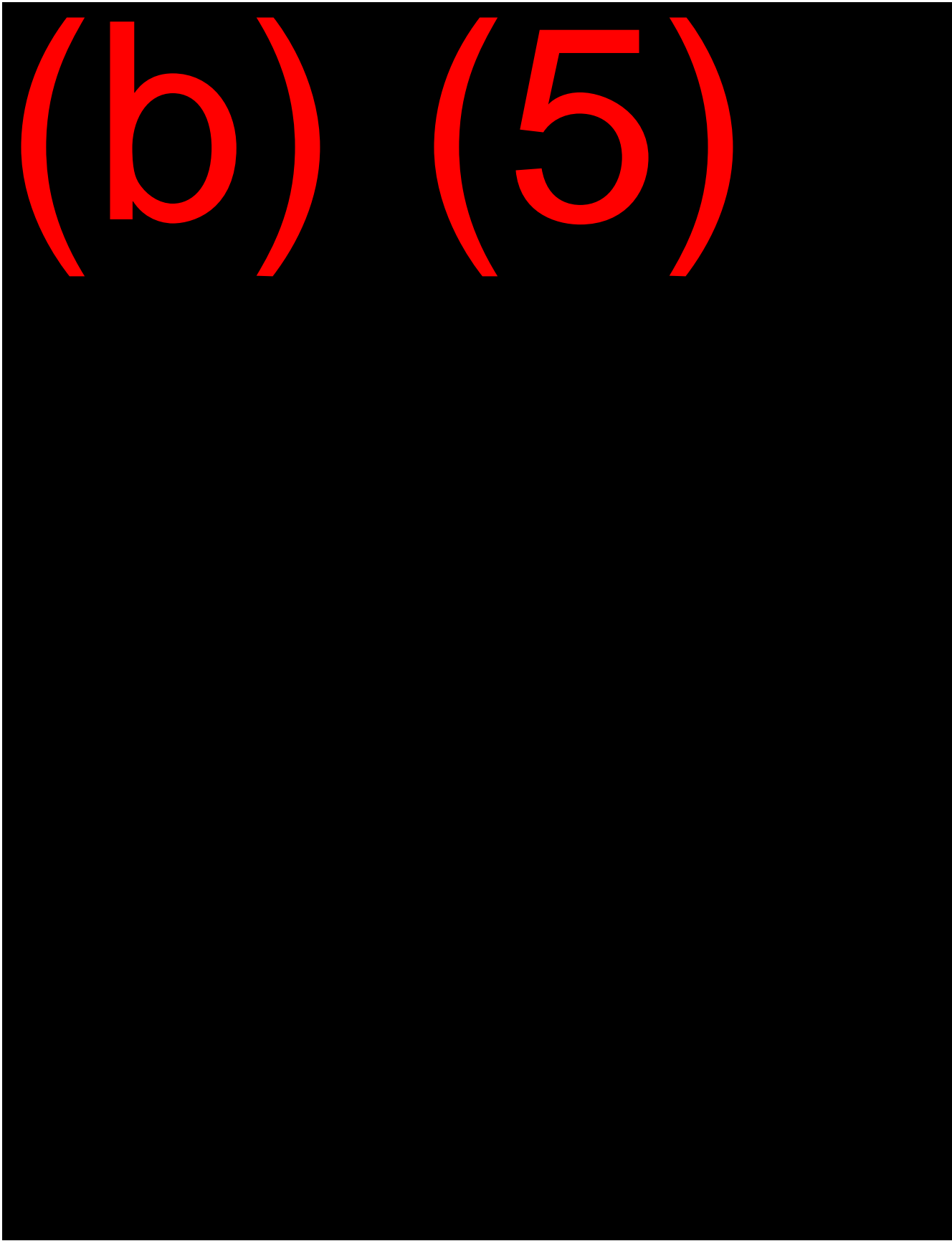
From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

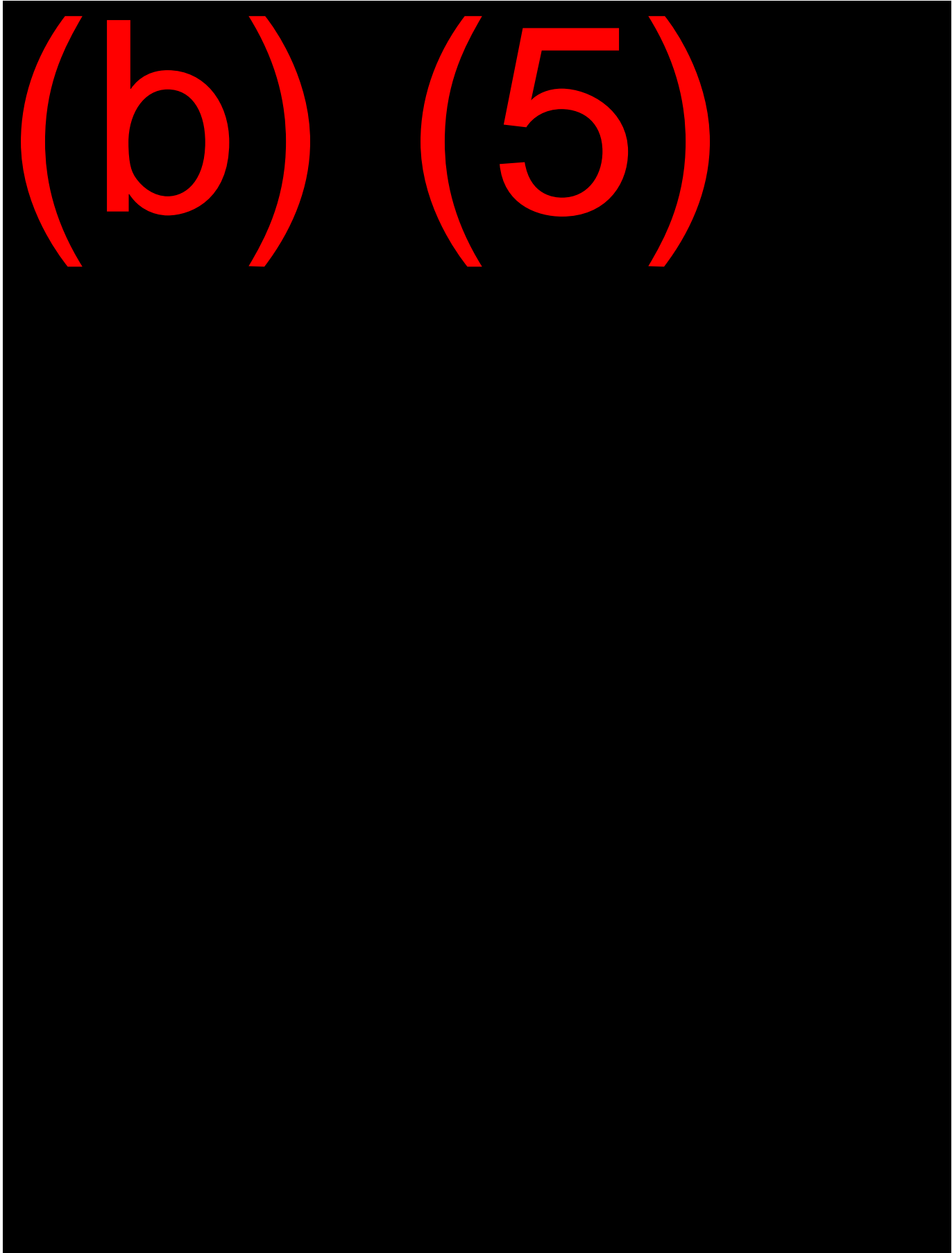
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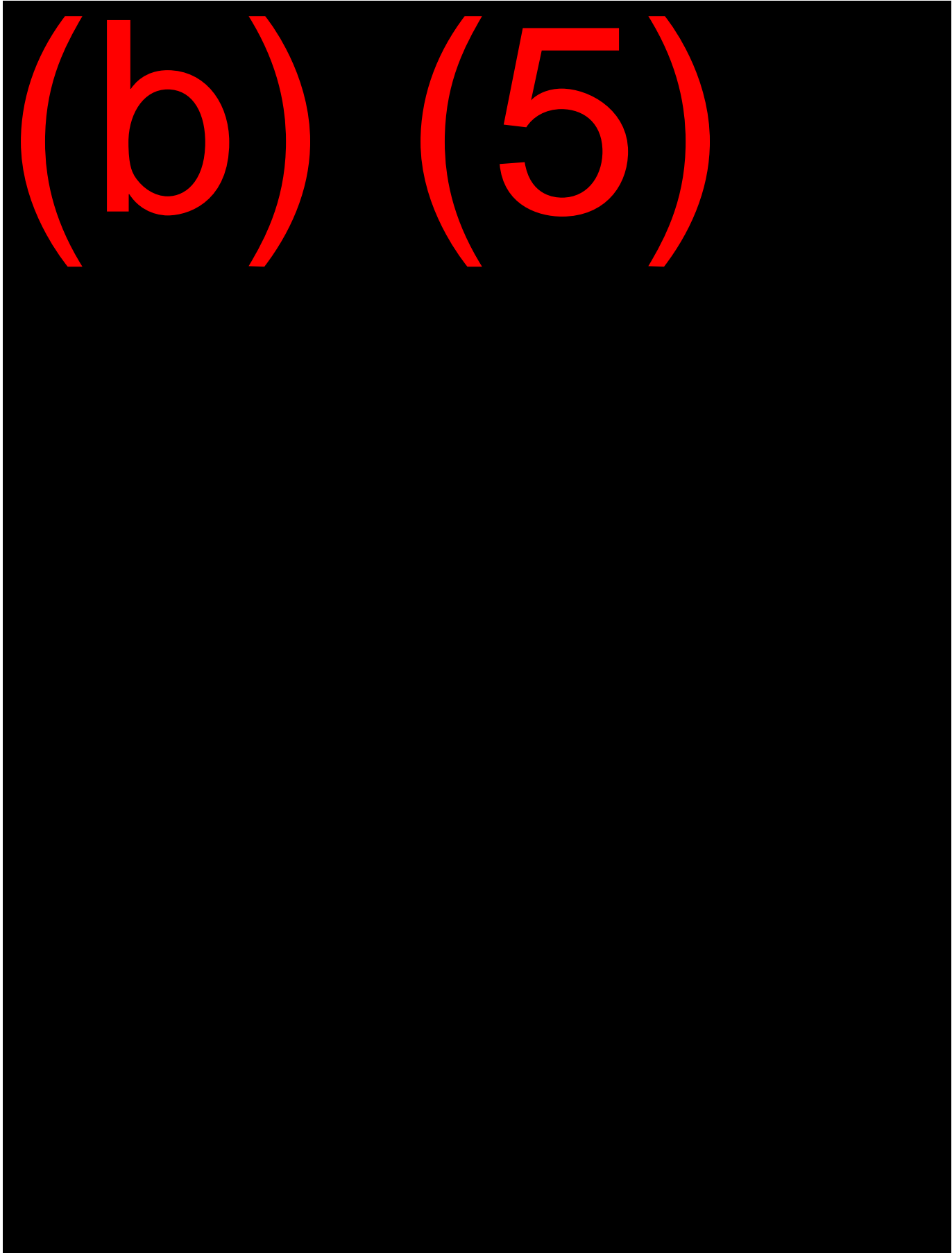
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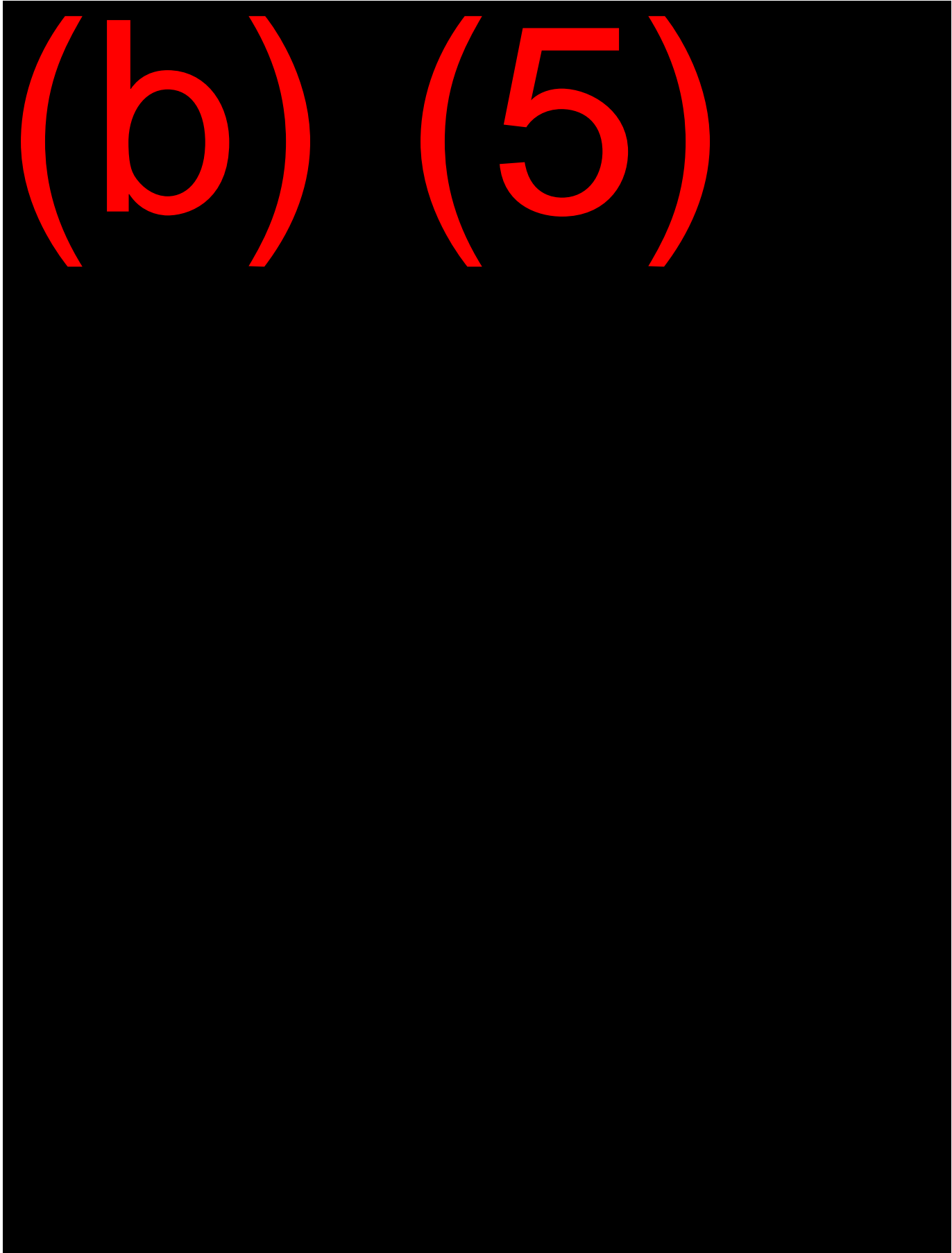


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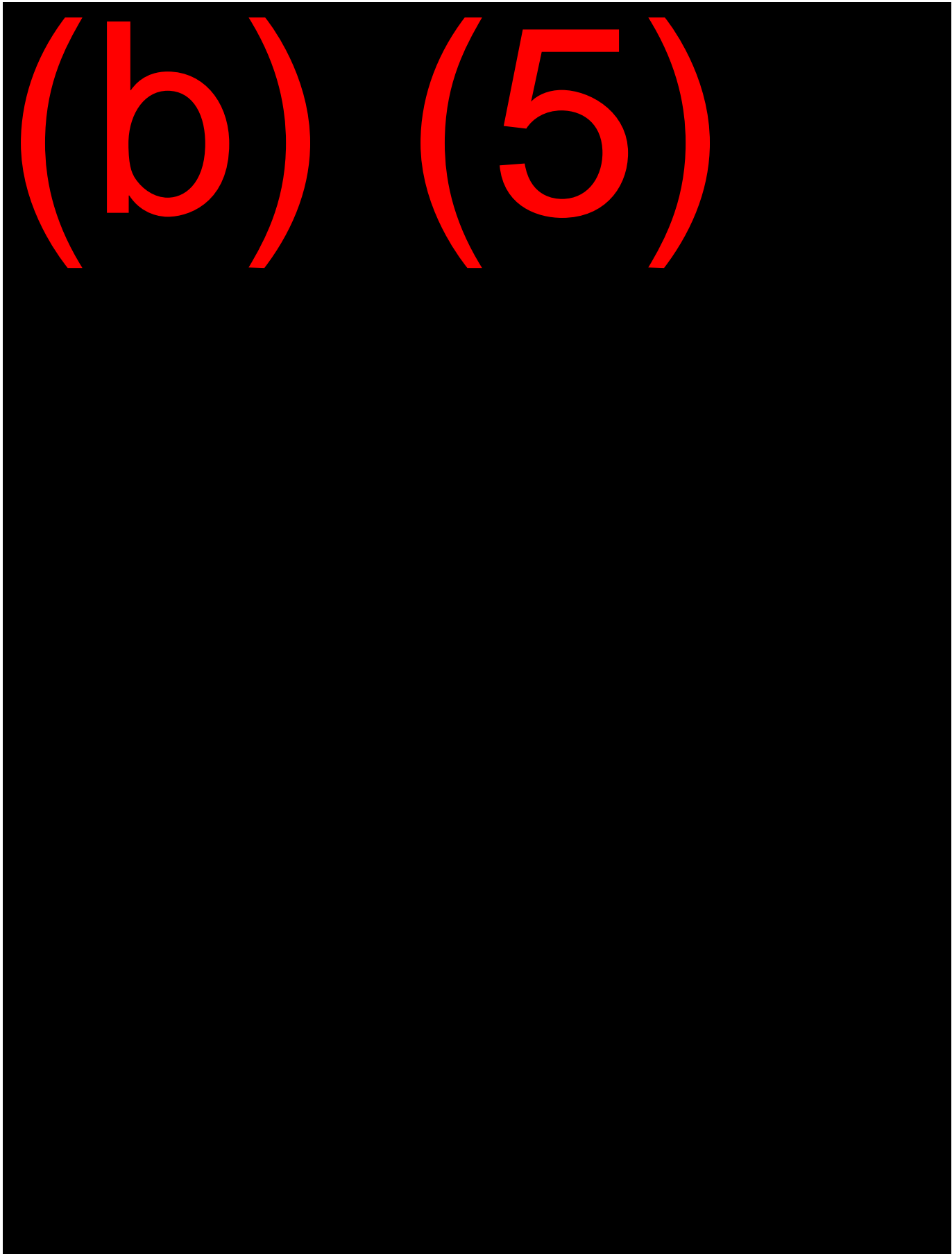




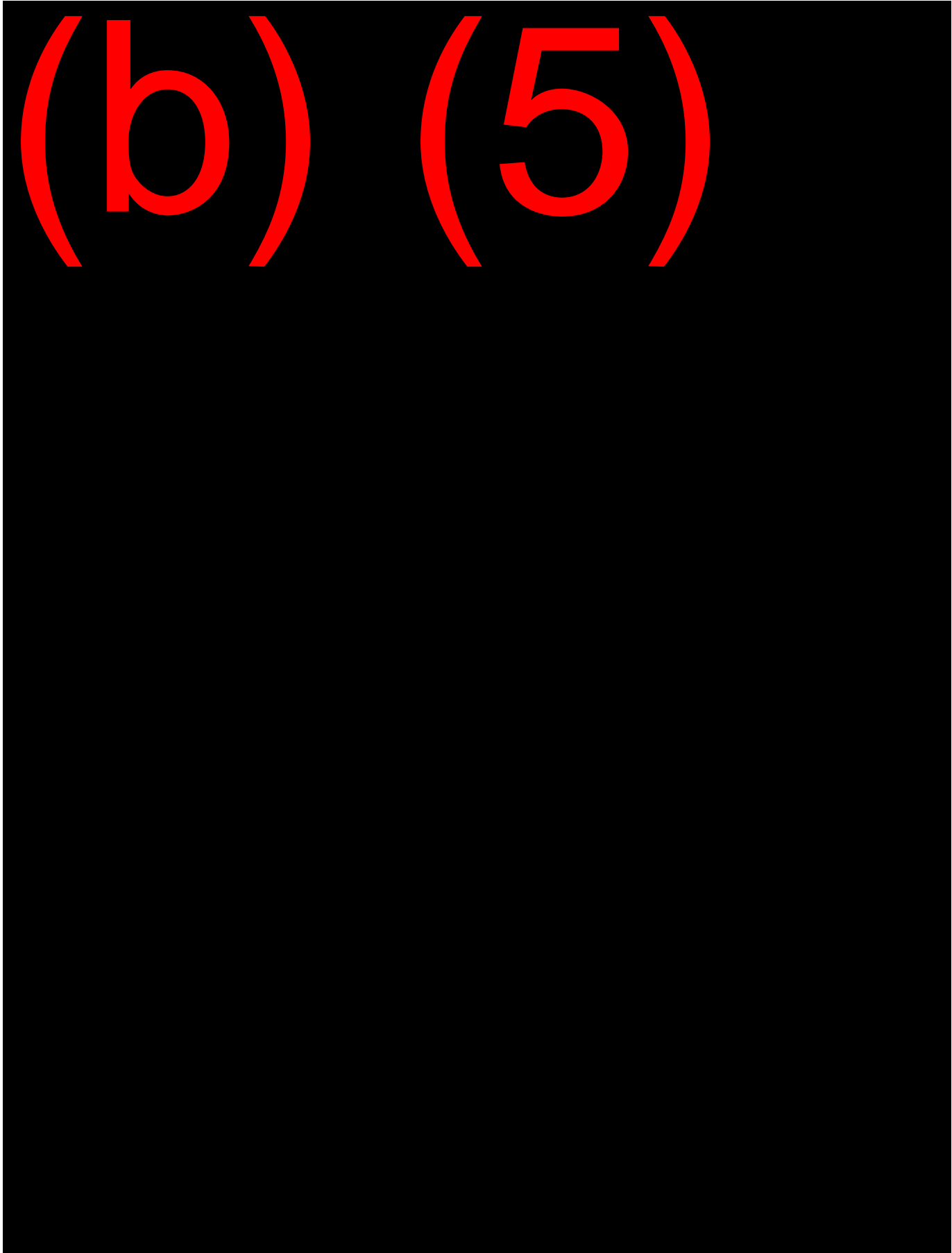
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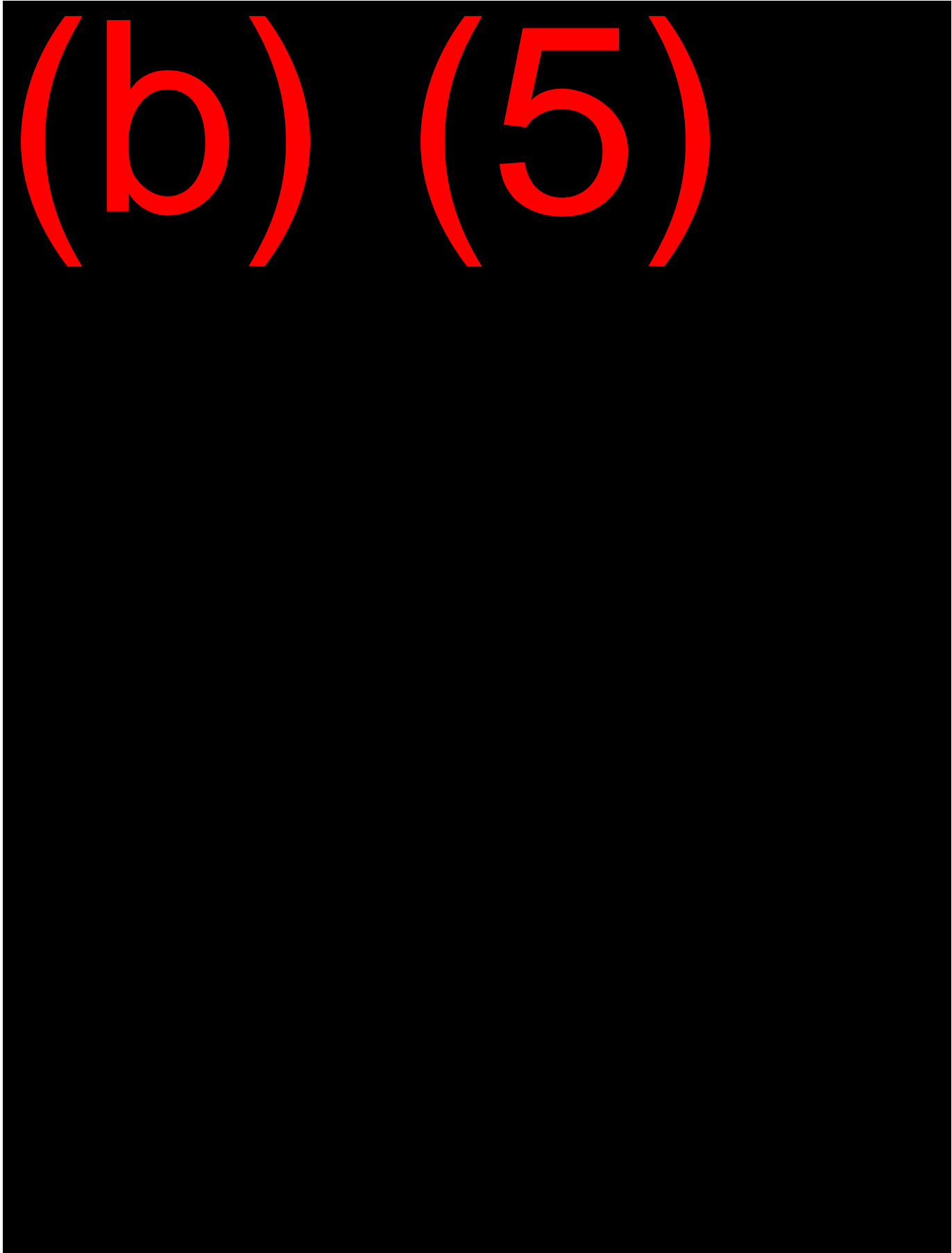
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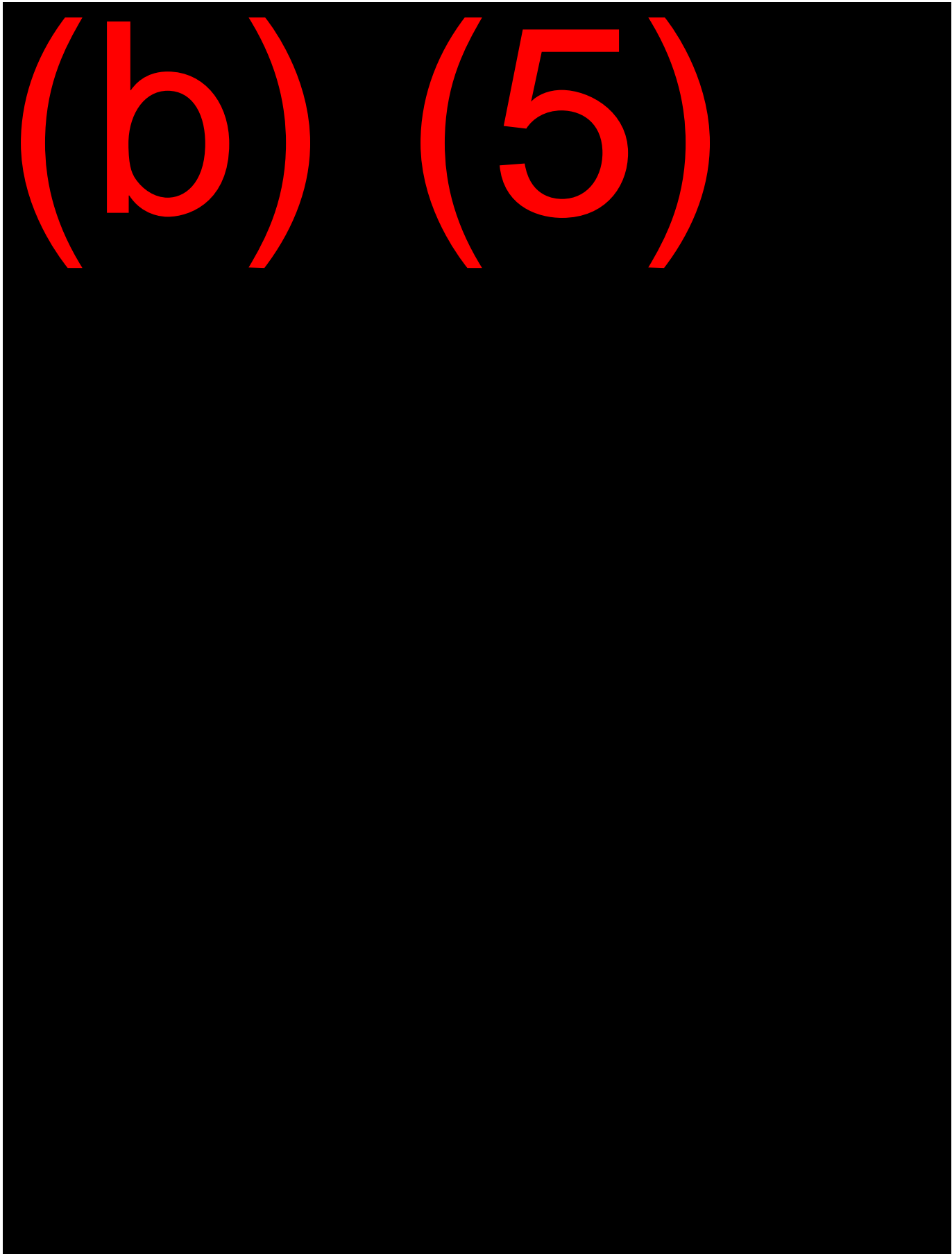
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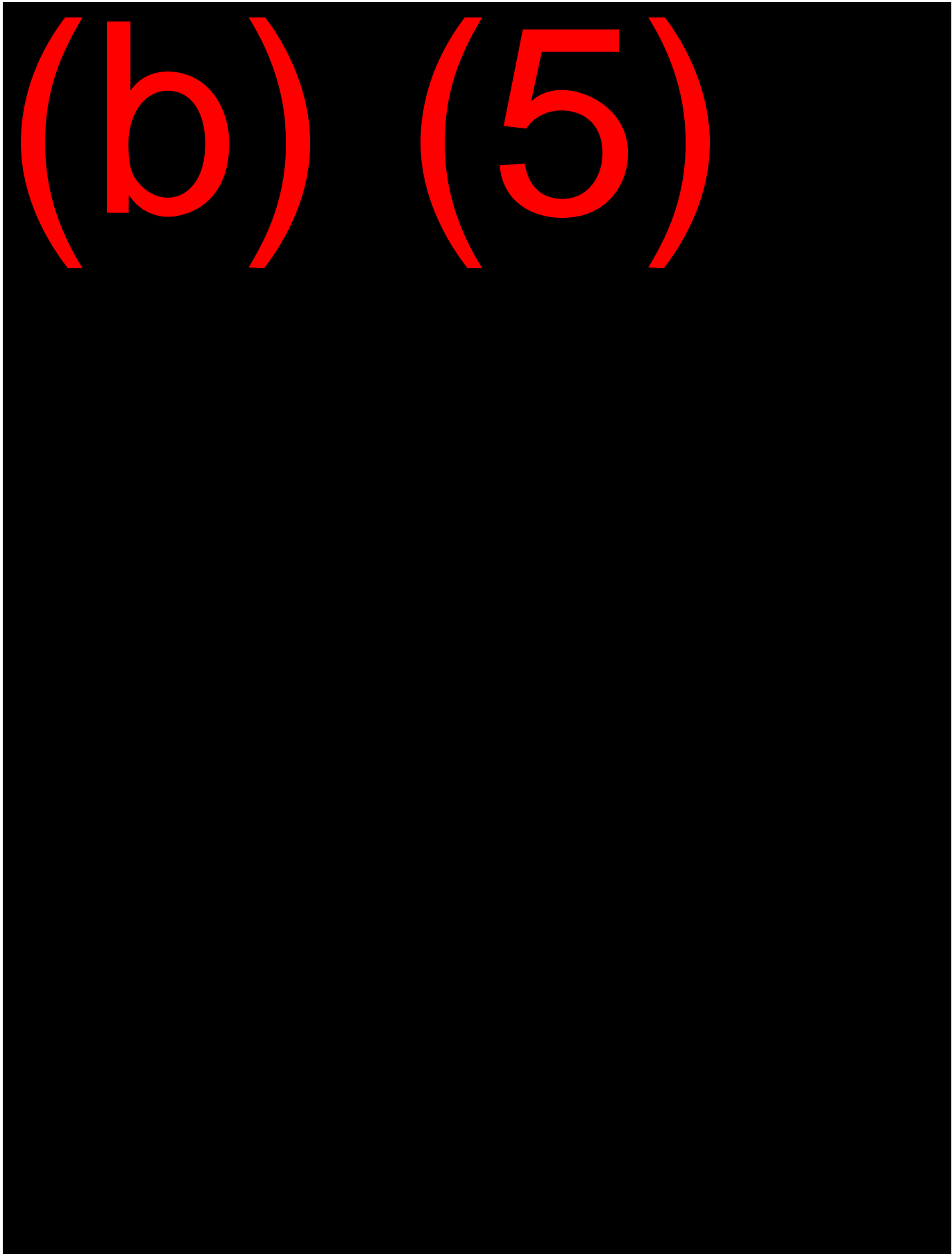
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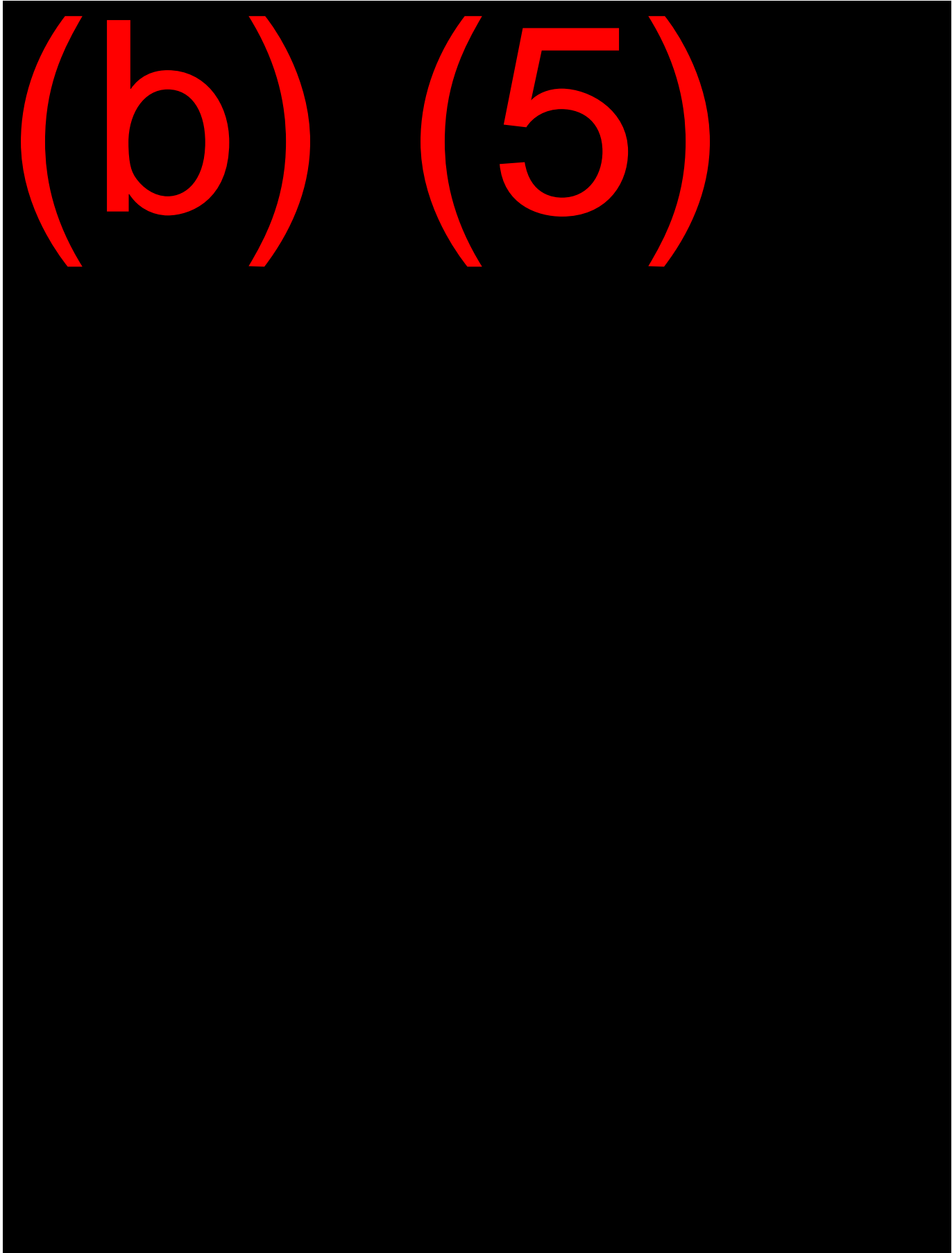
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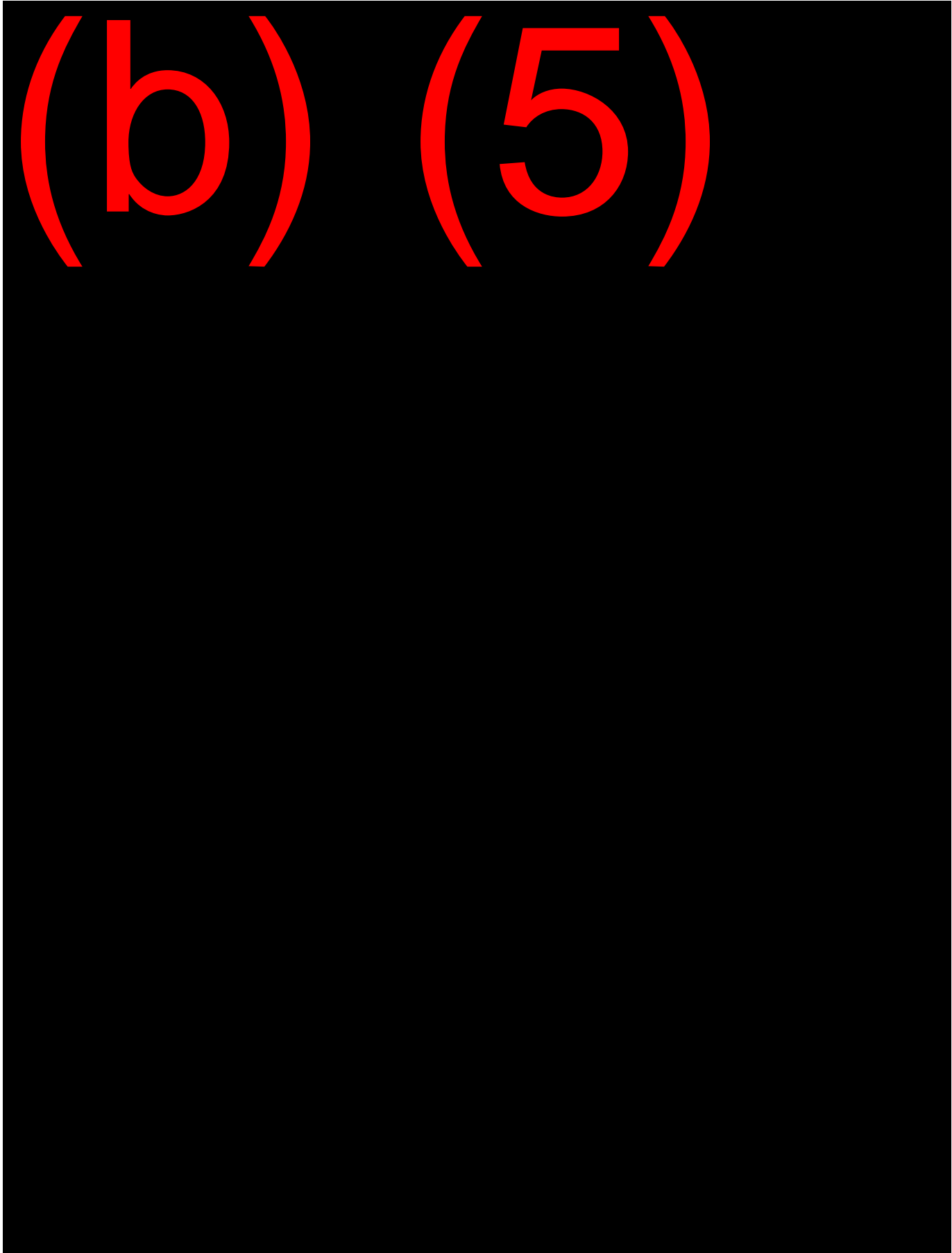
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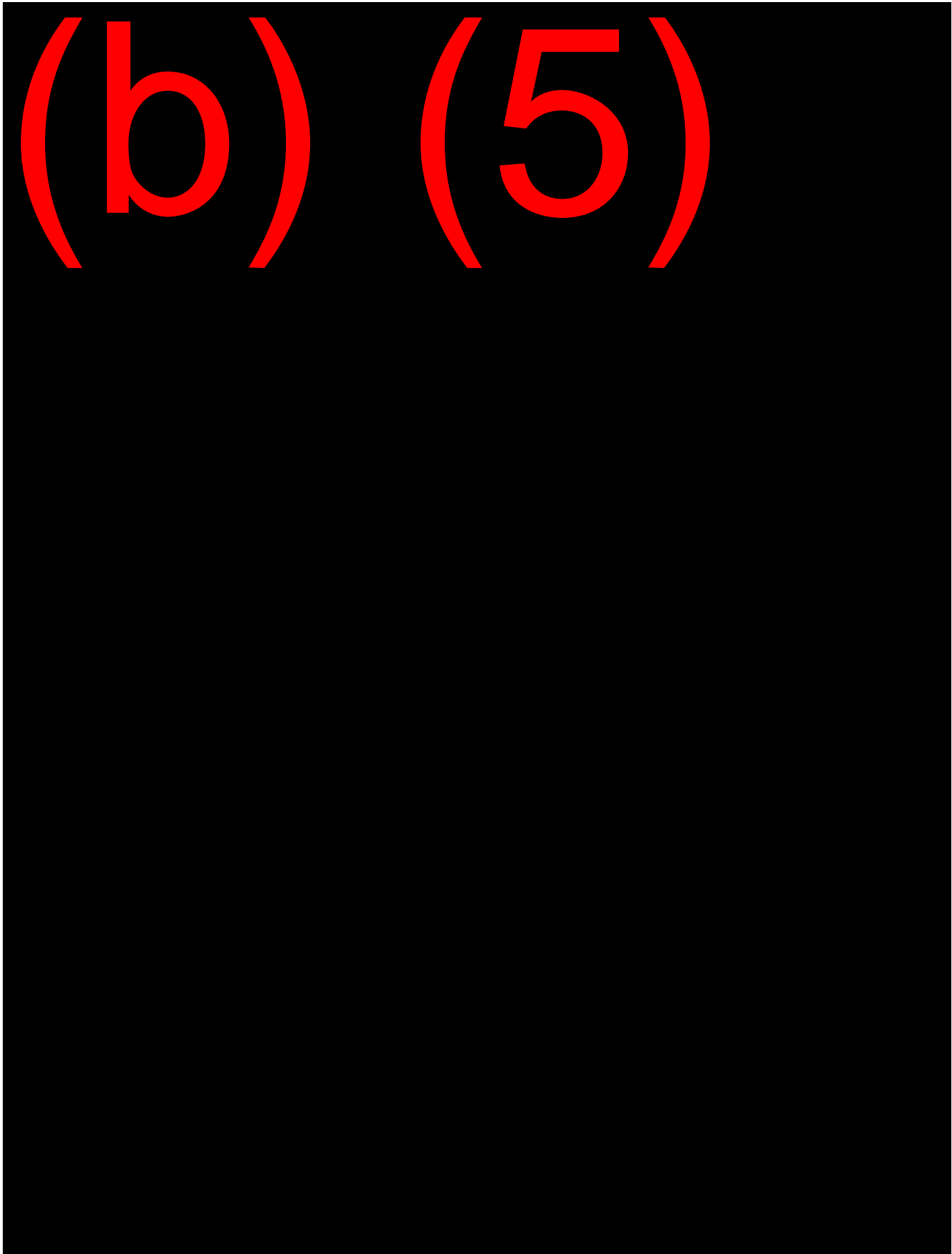


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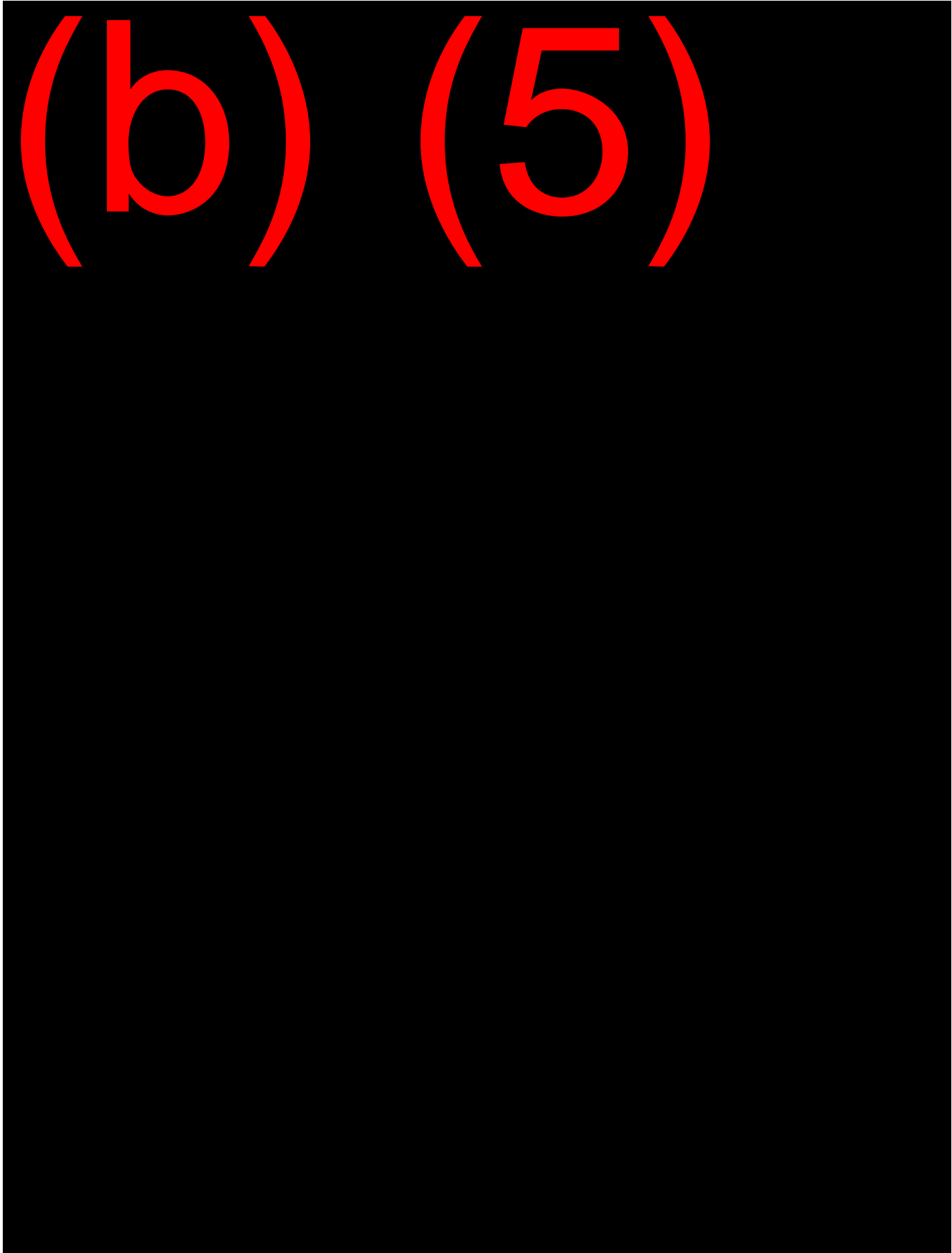




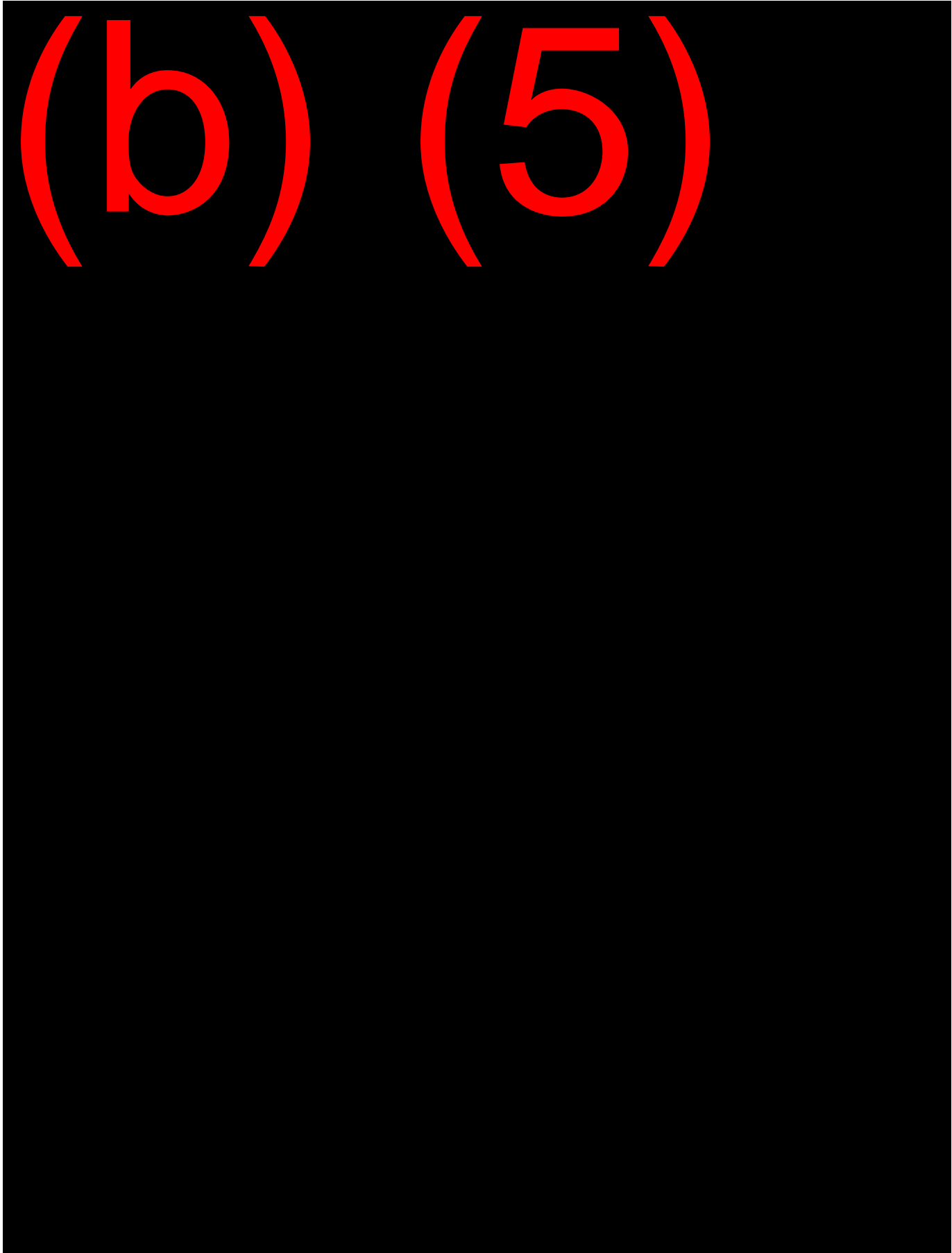
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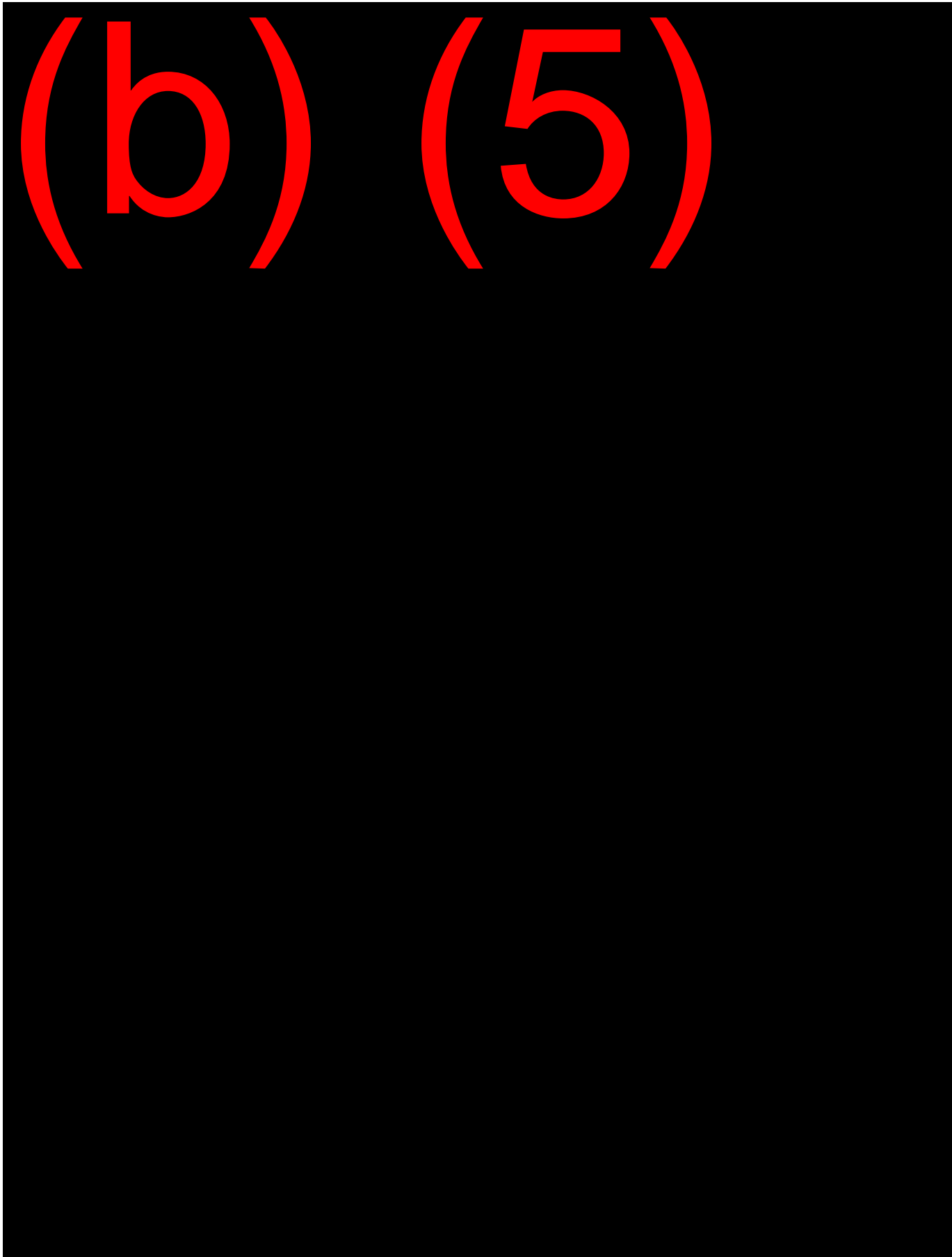
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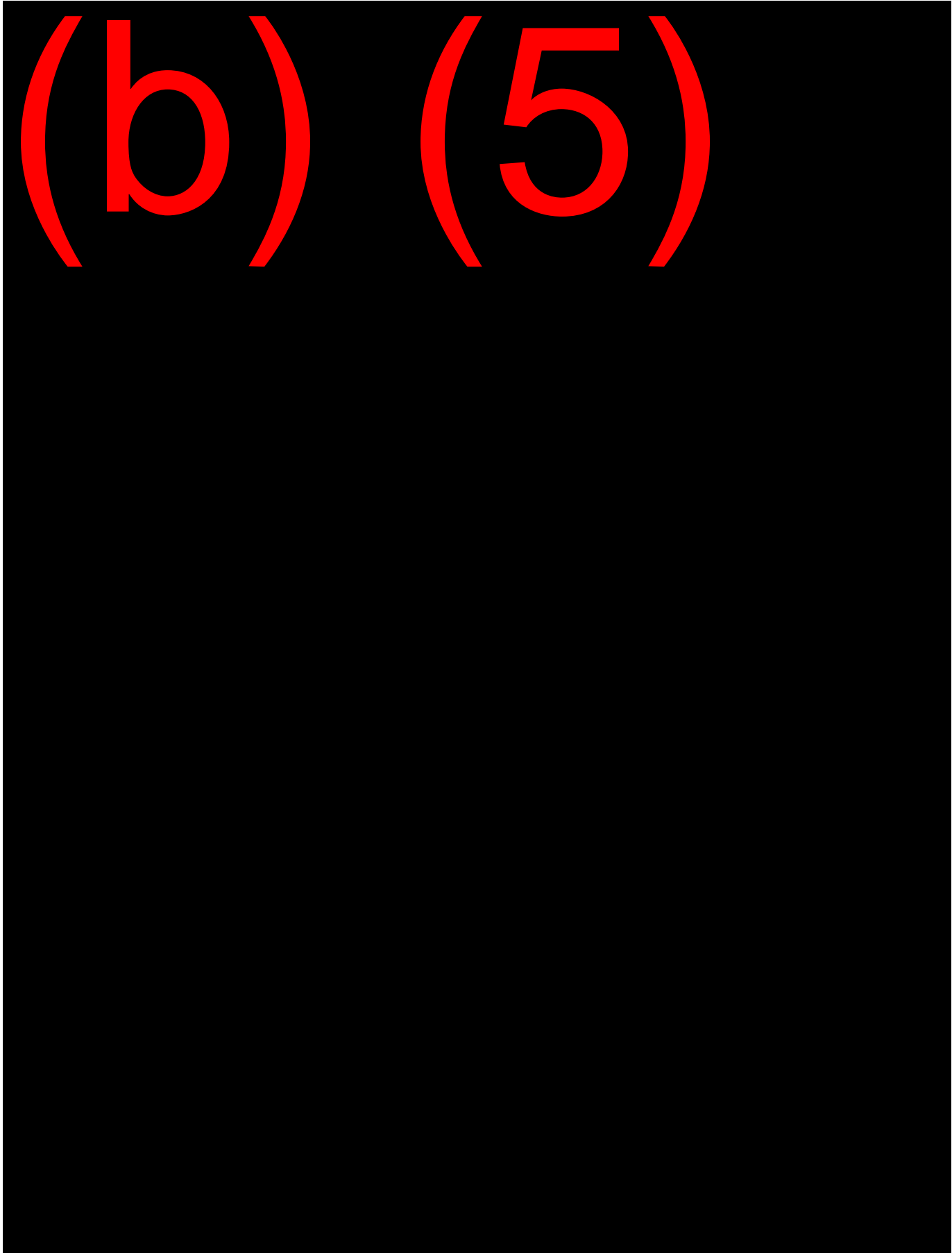
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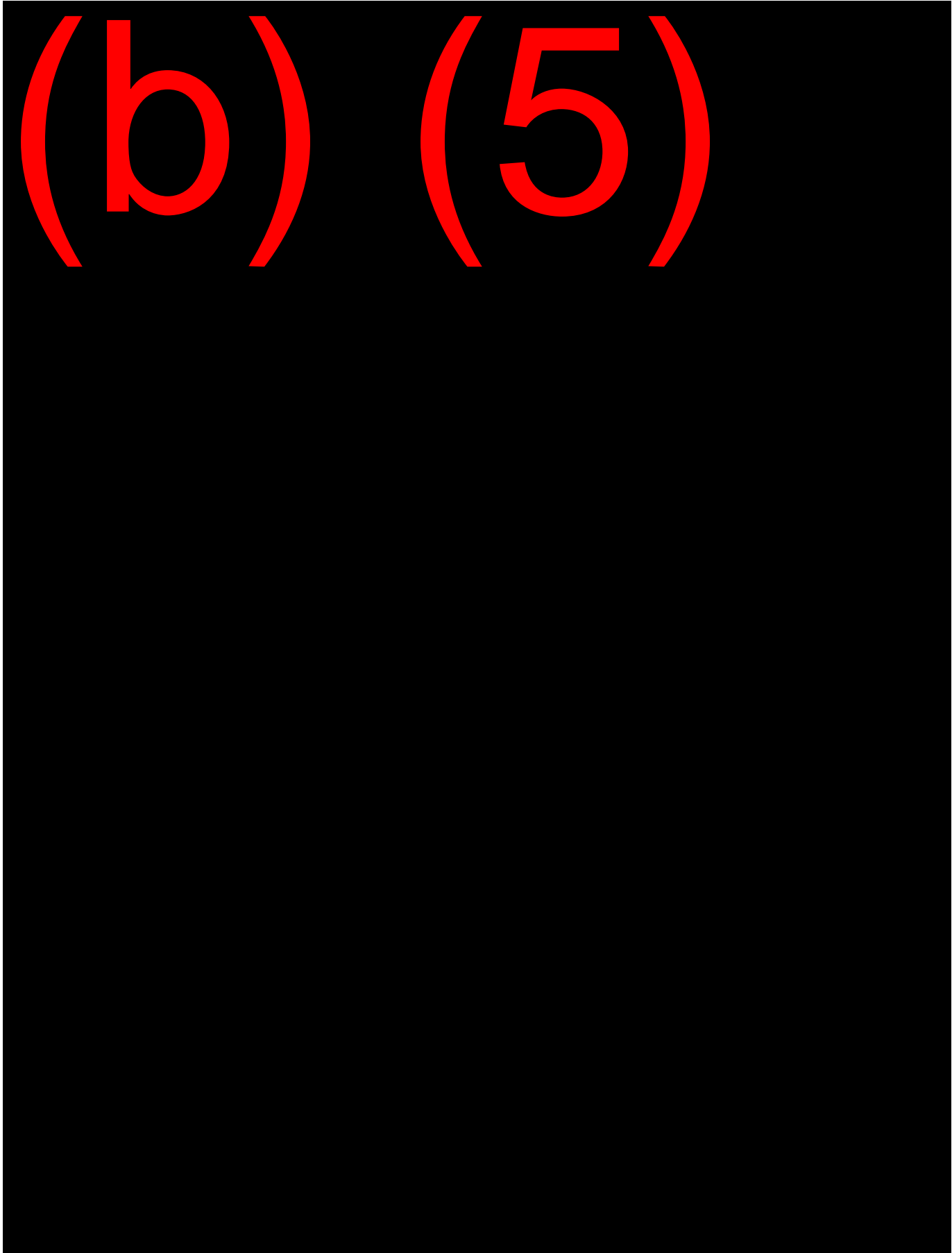
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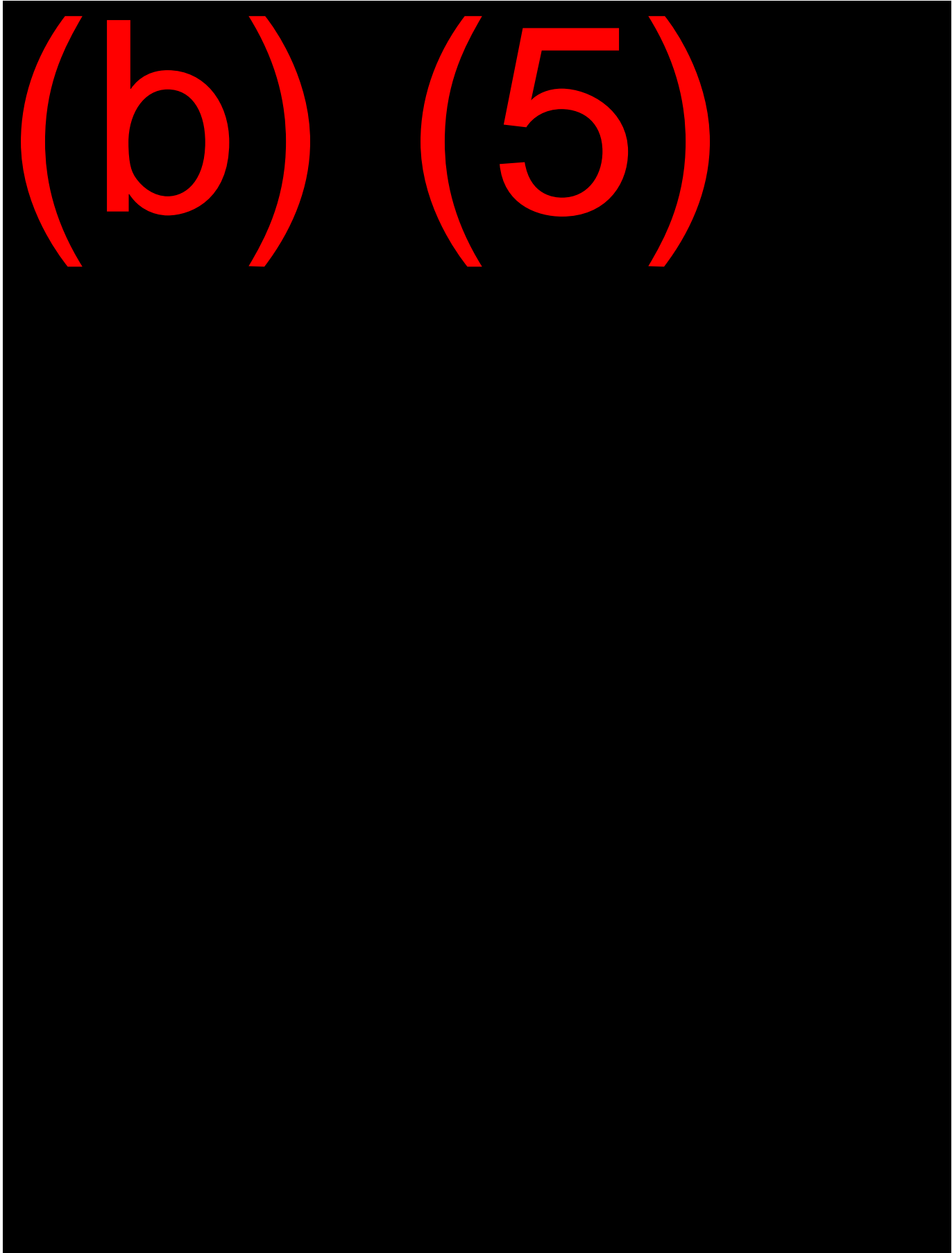
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DRAFT – Privileged and Confidential  
December 8, 2017

M-

Memorandum

To: Director, Bureau of Land Management

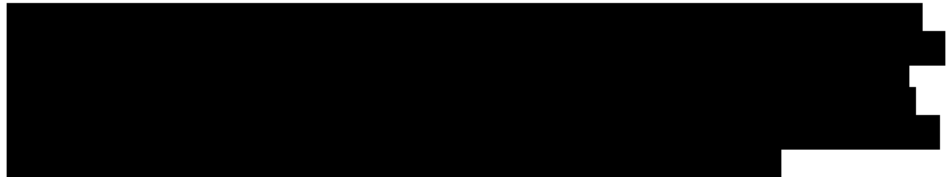
From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

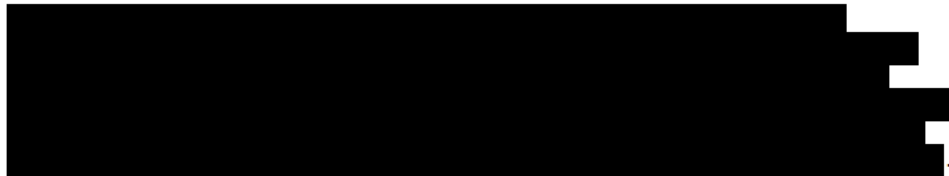
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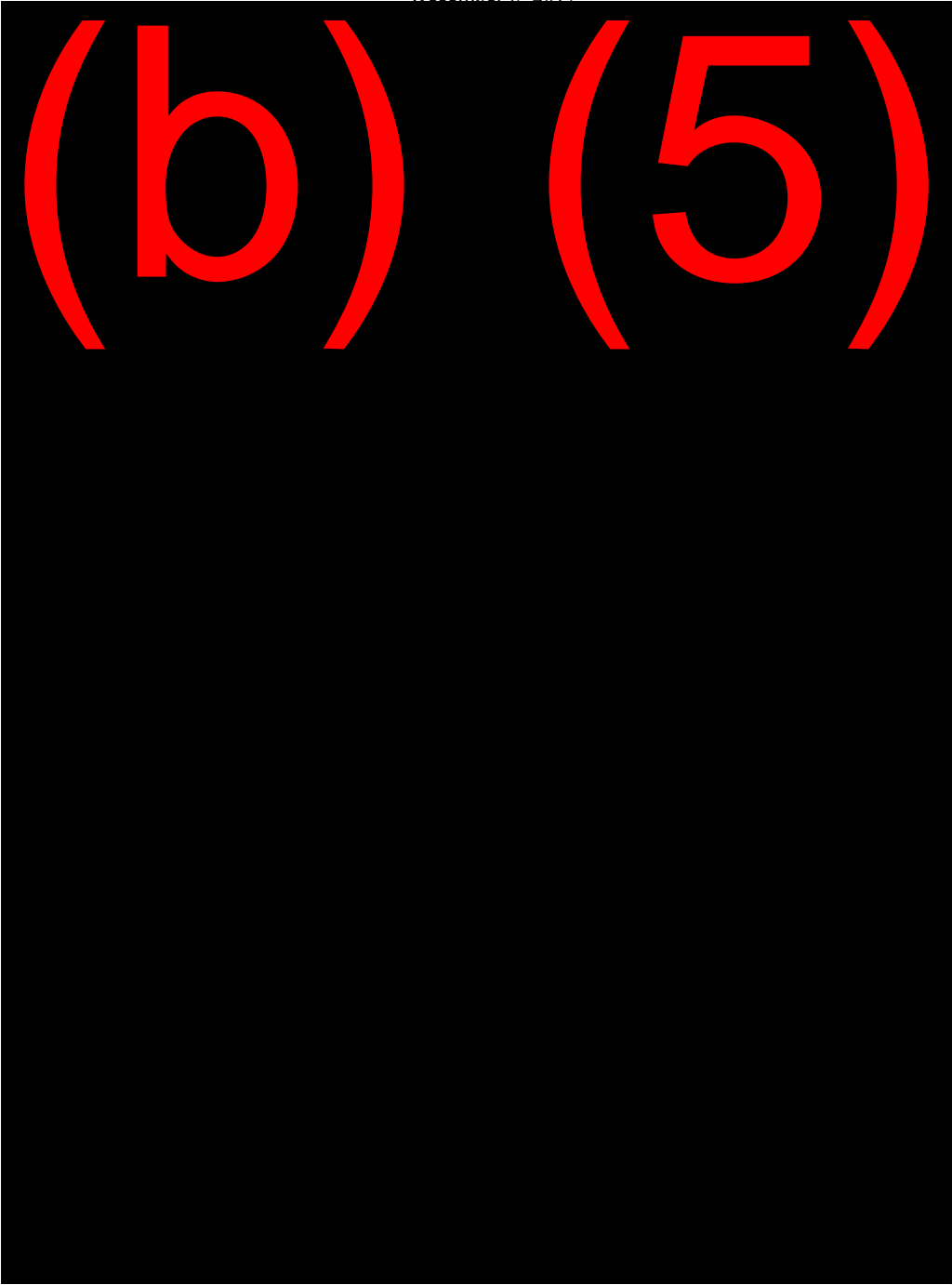
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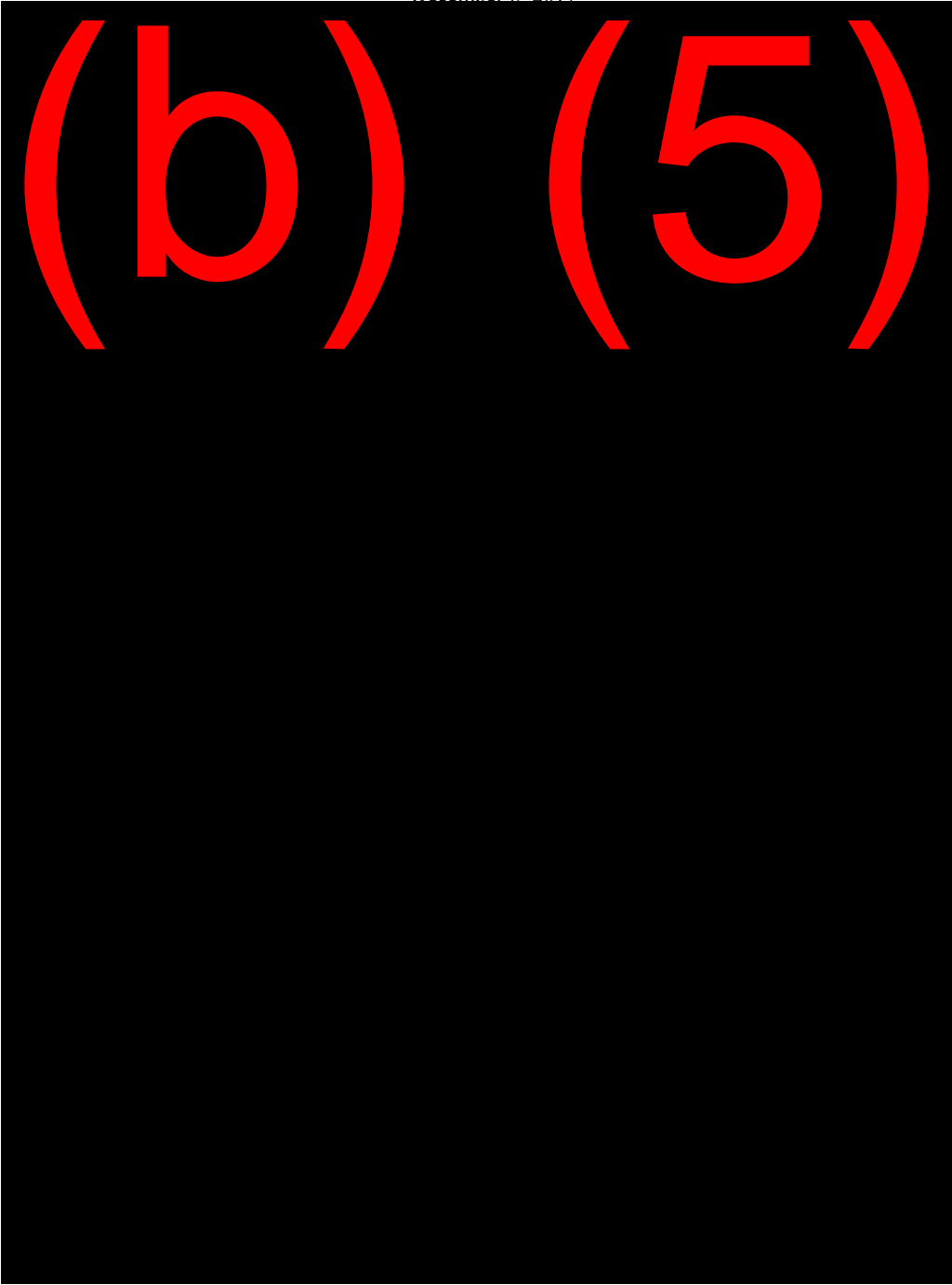
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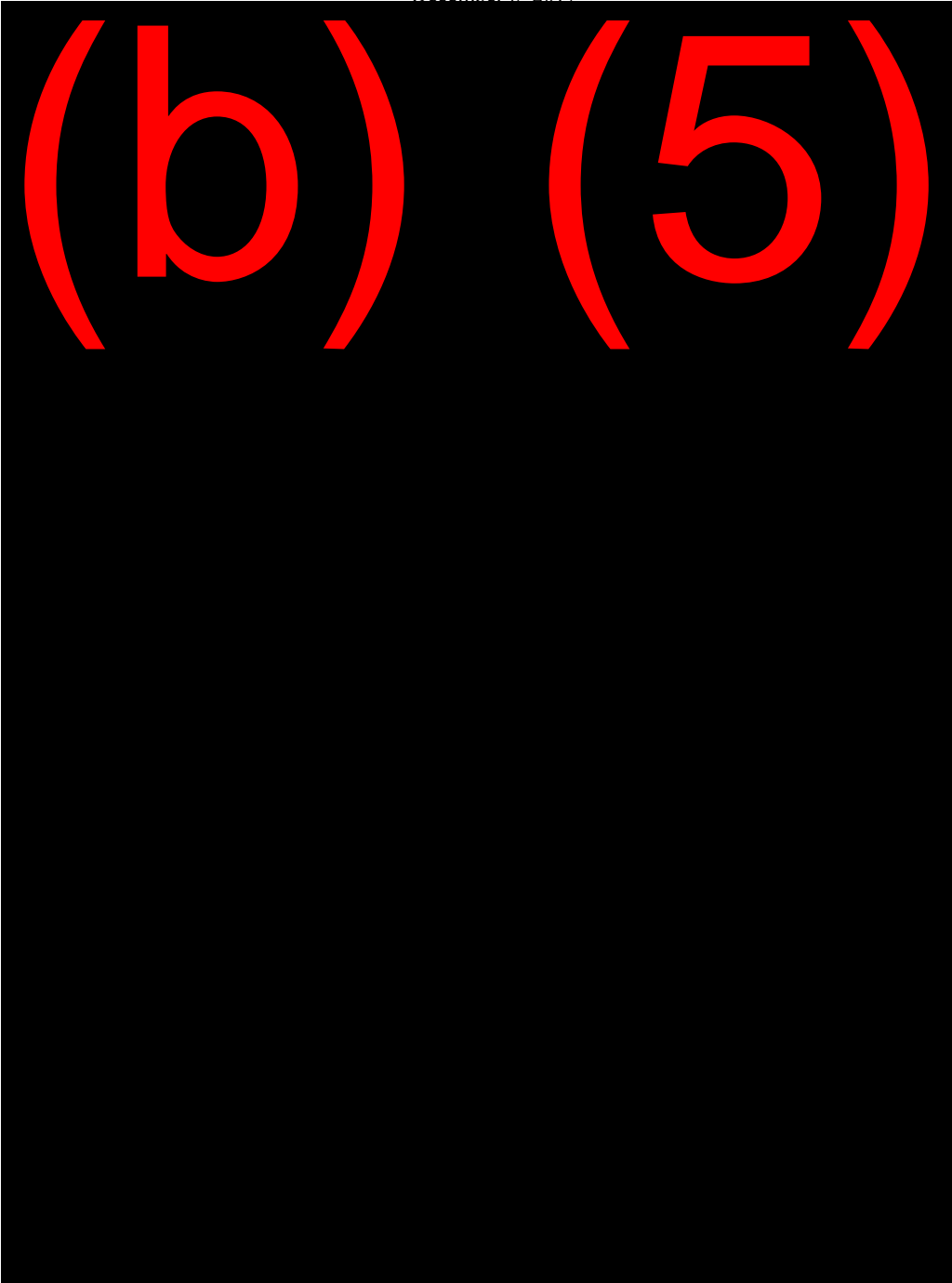
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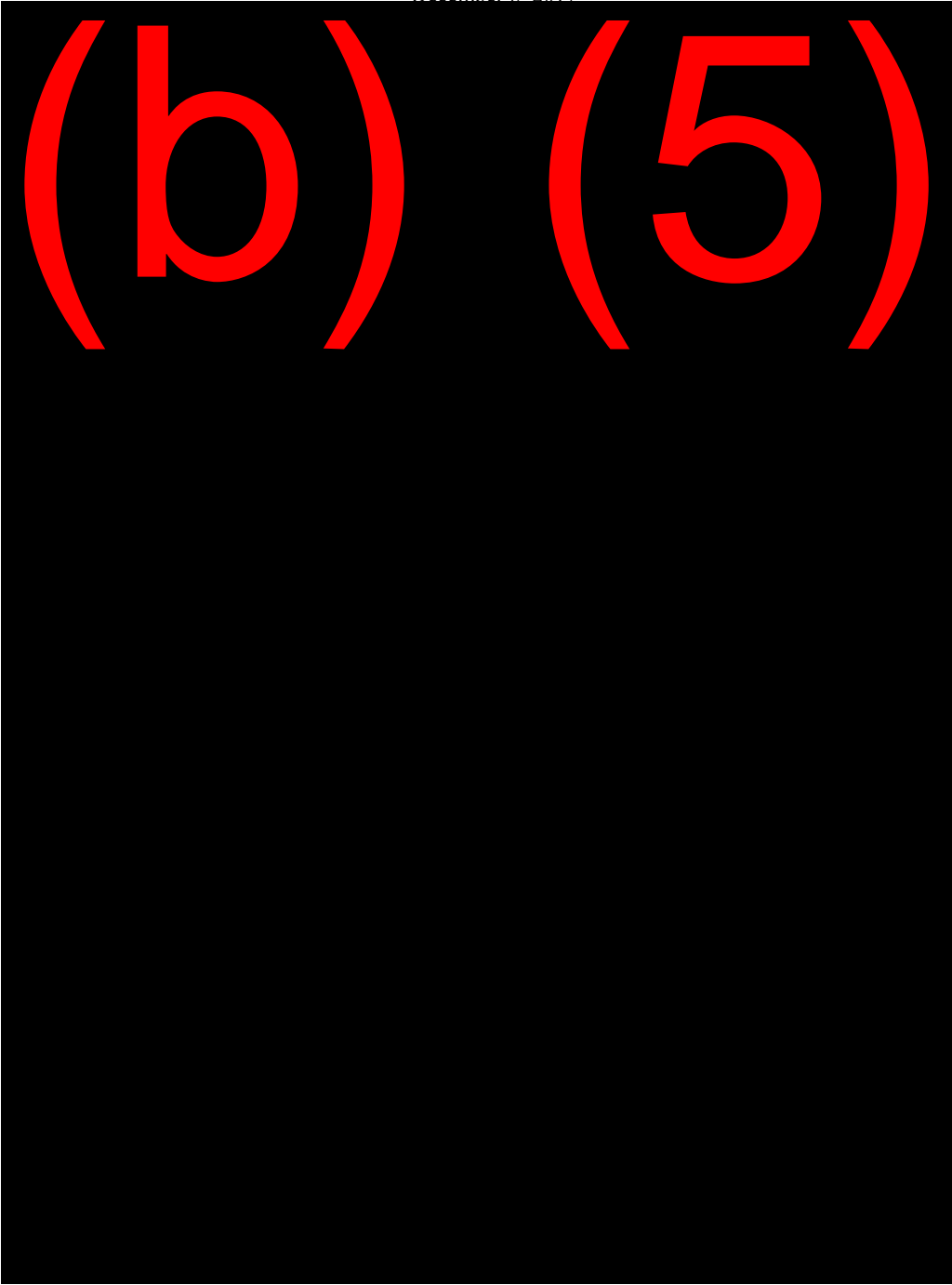
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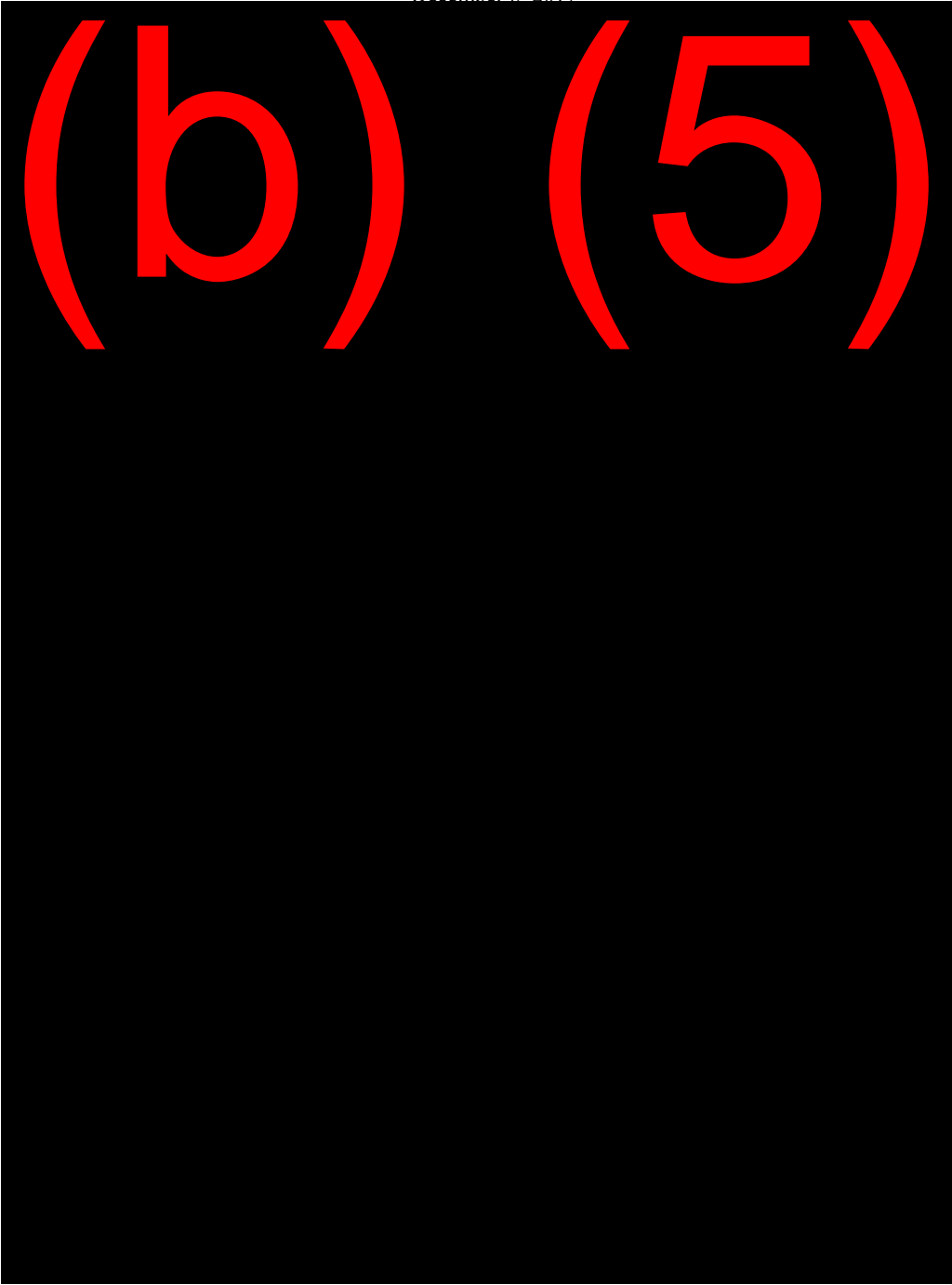
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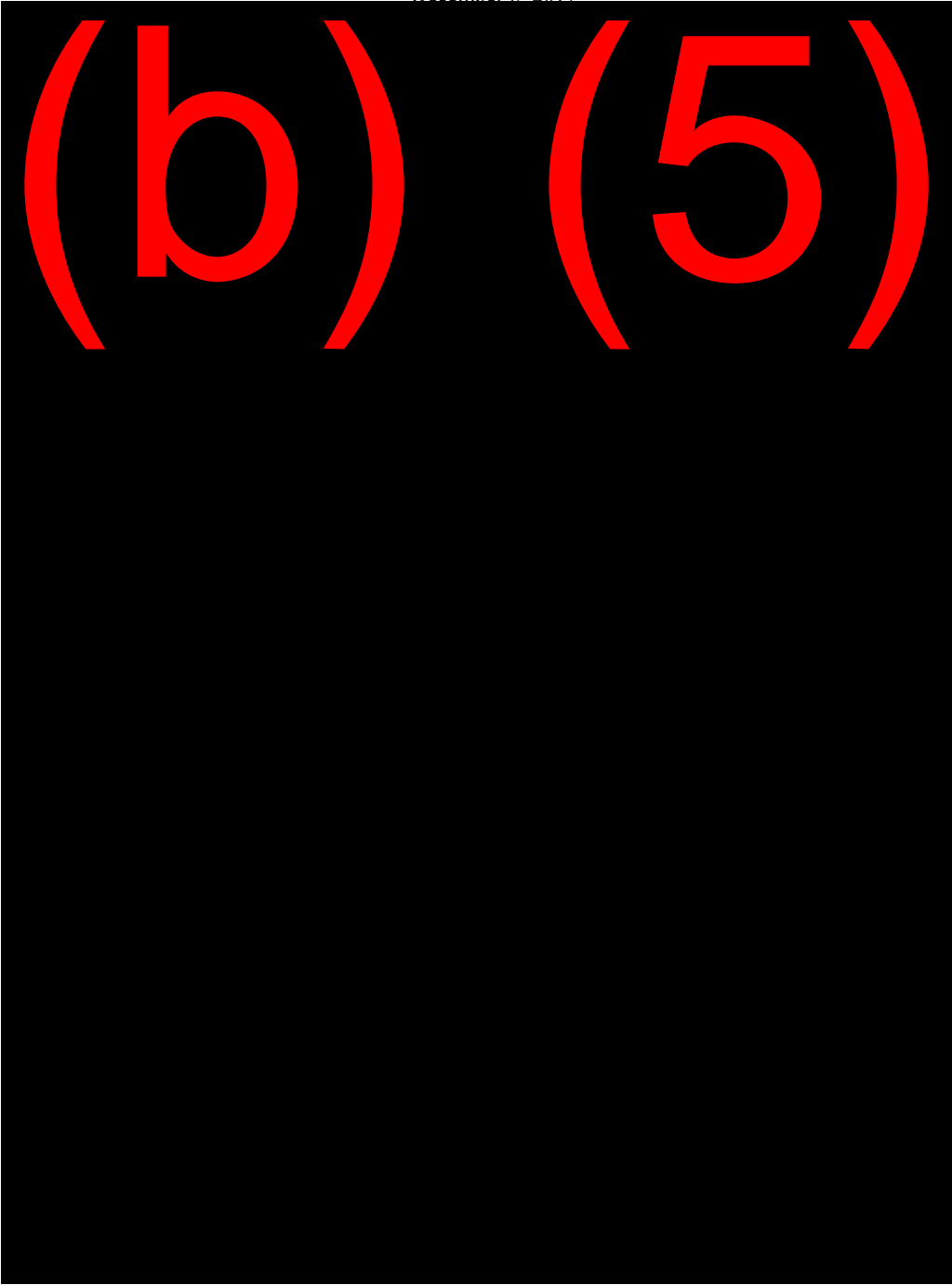
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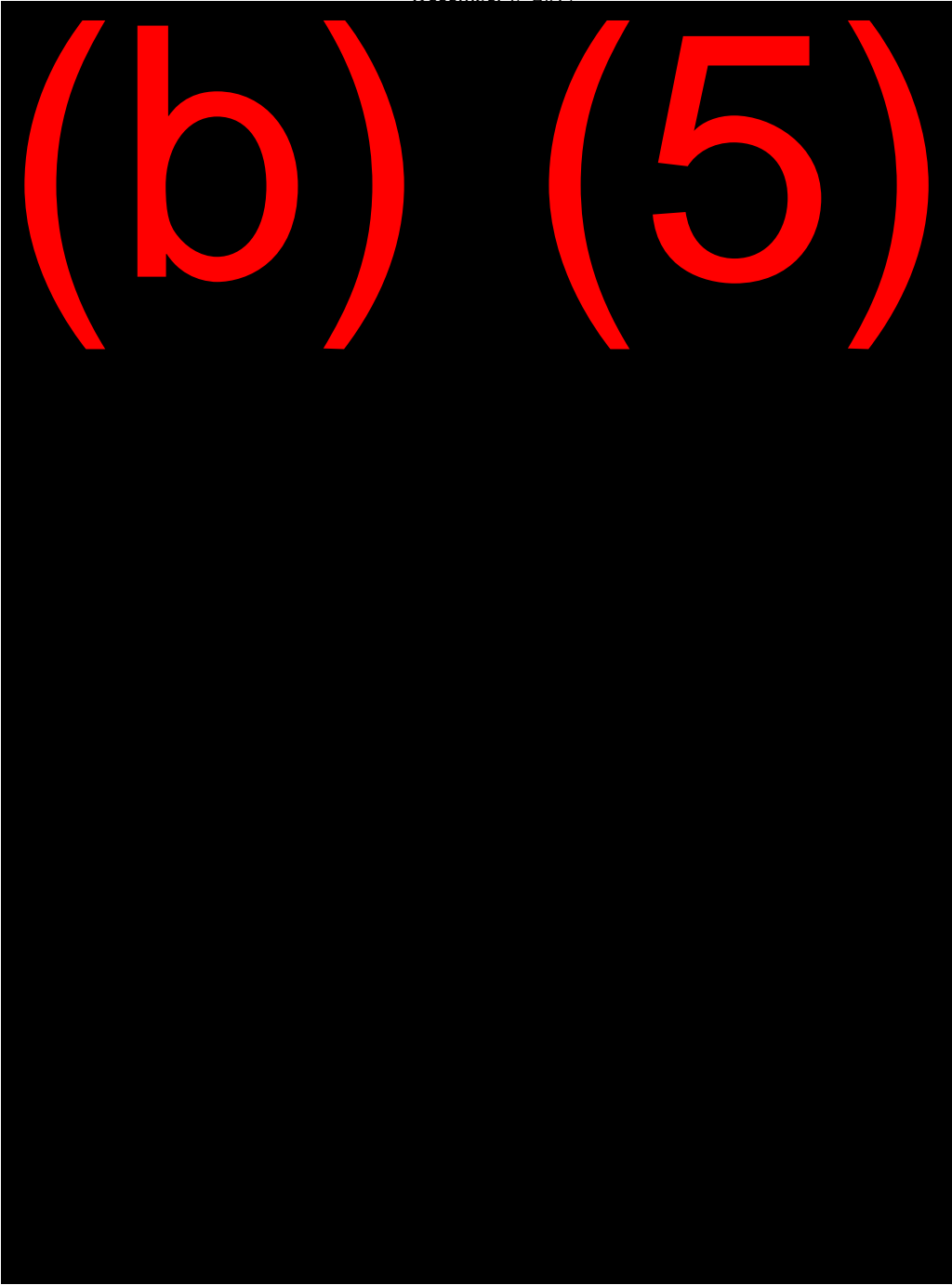
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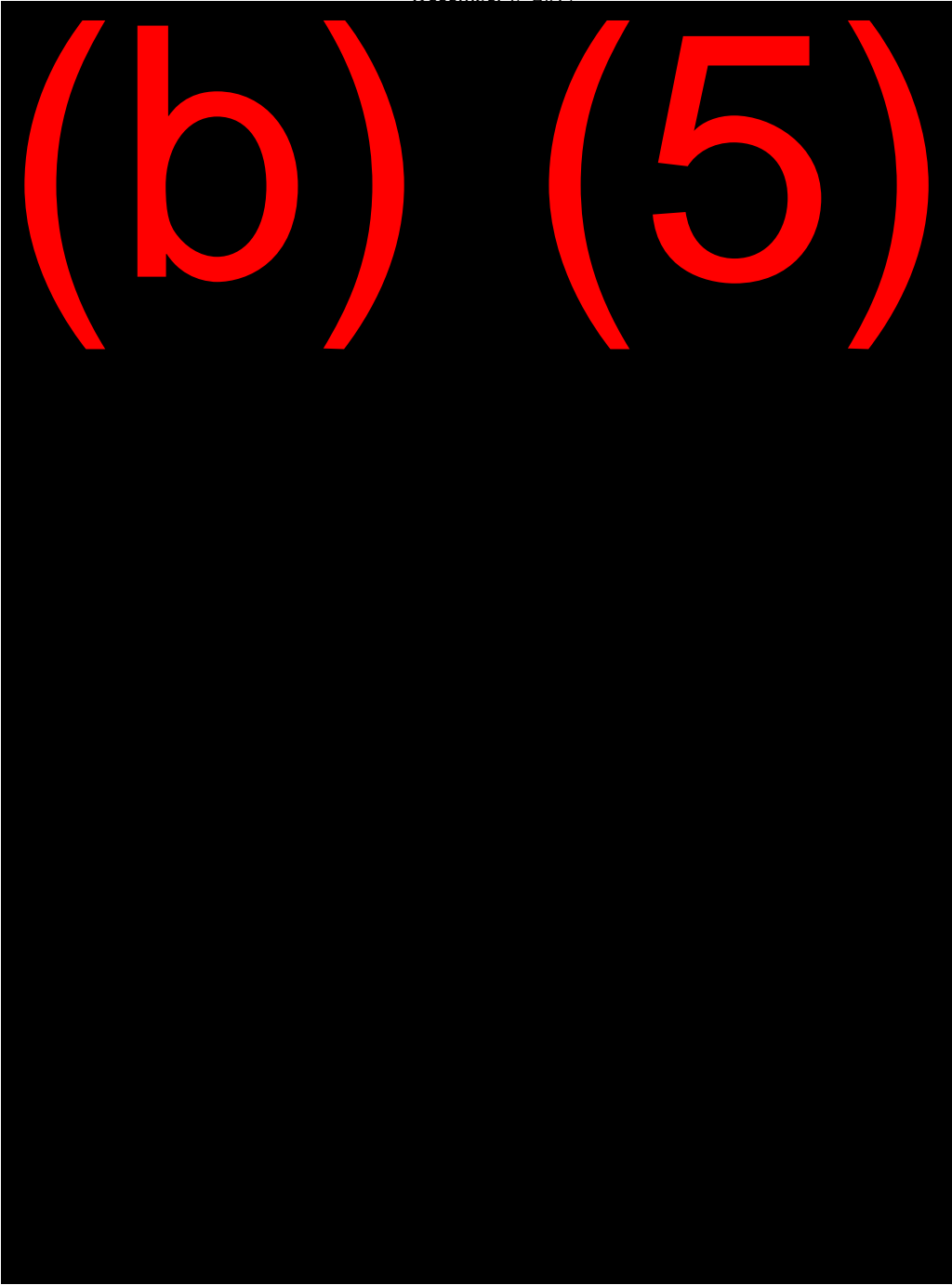
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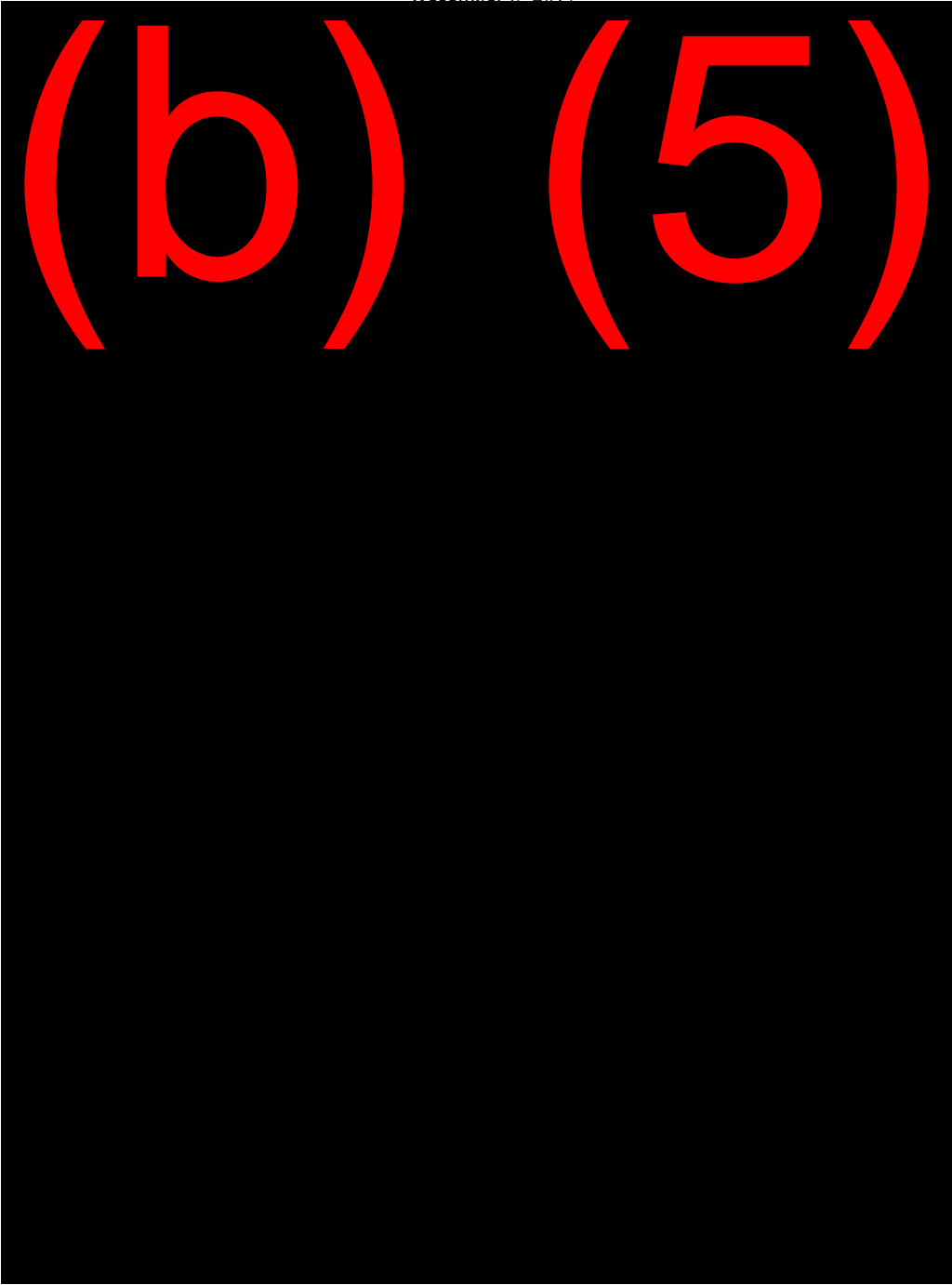
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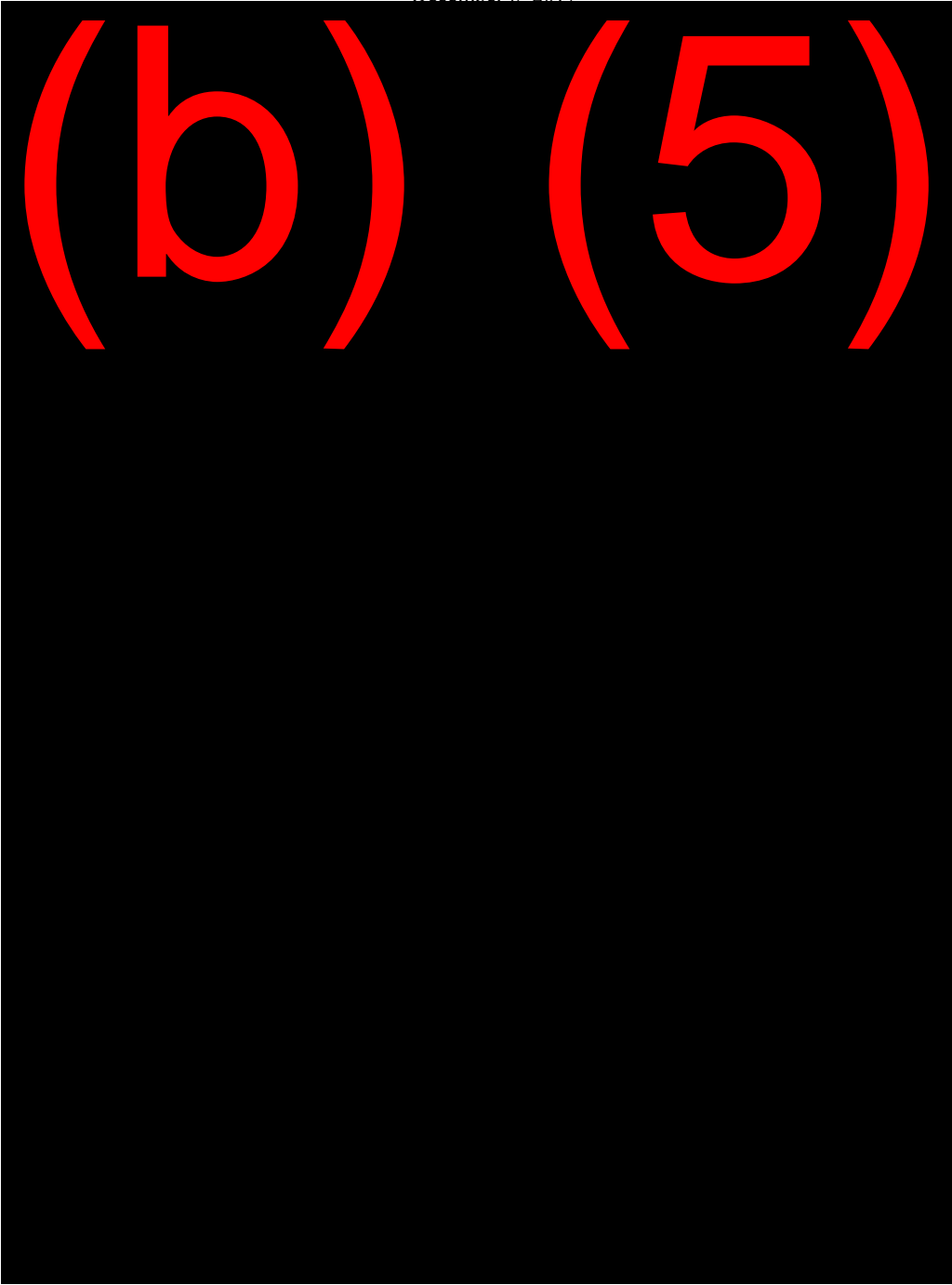
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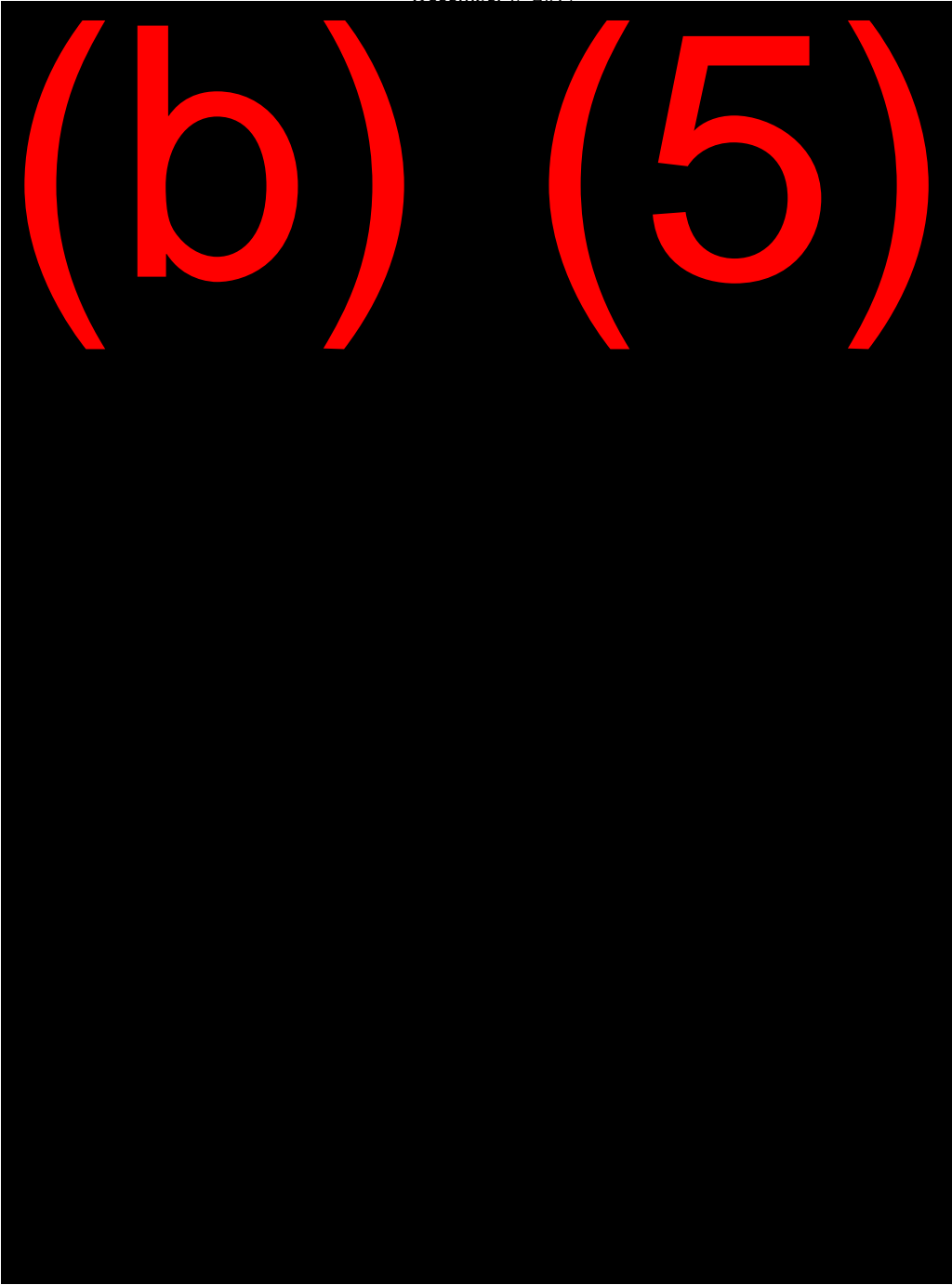


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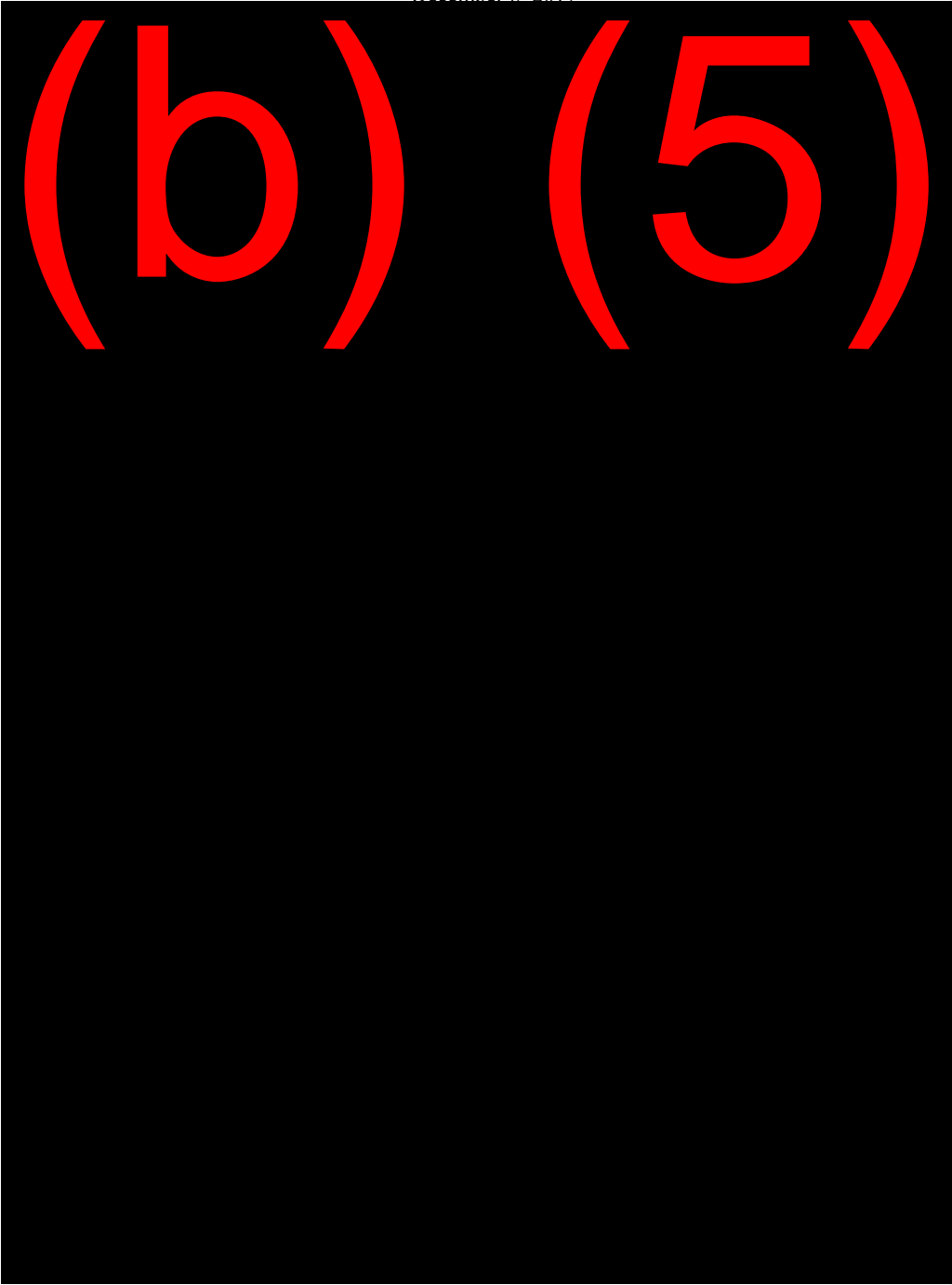


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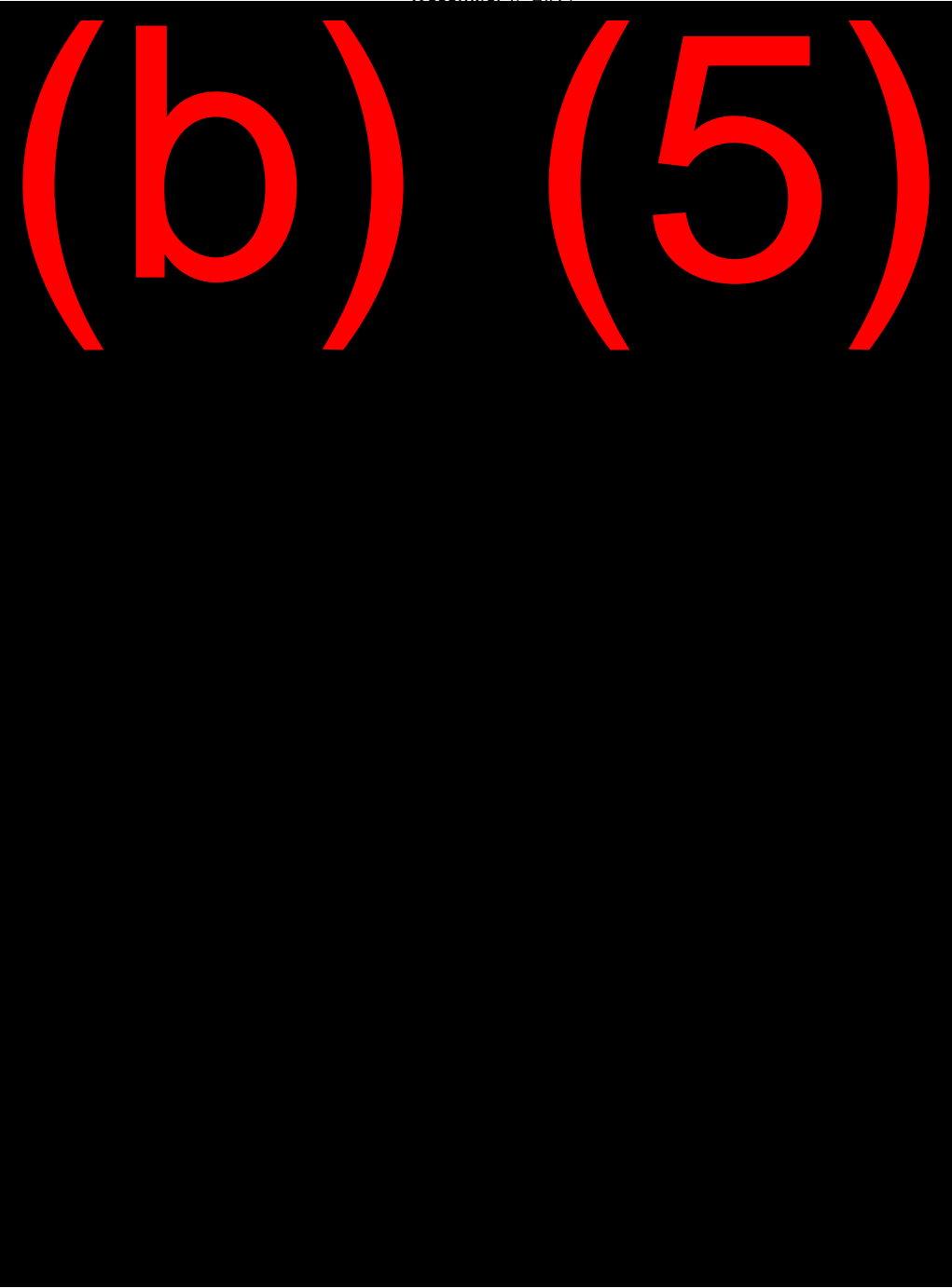
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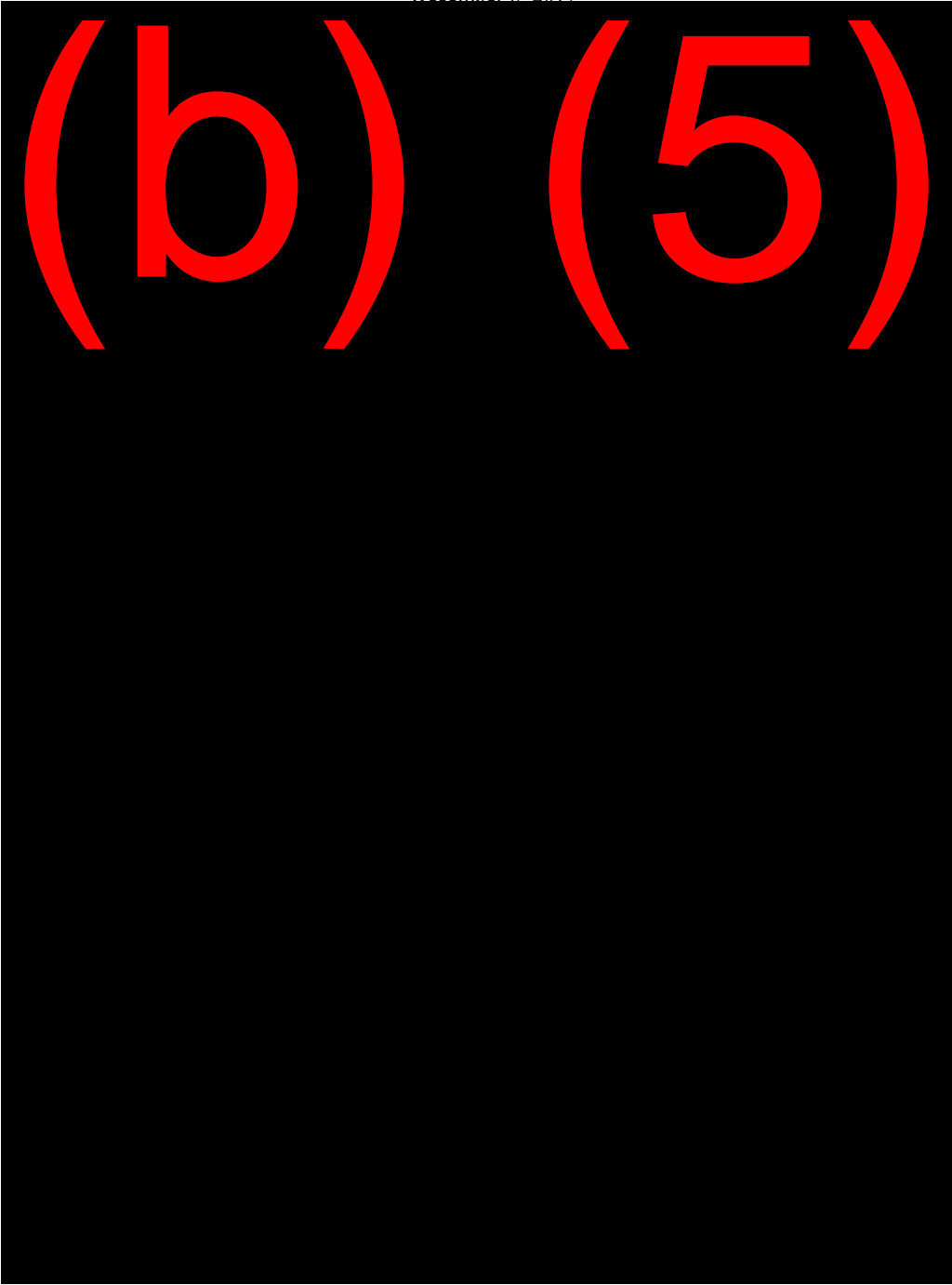


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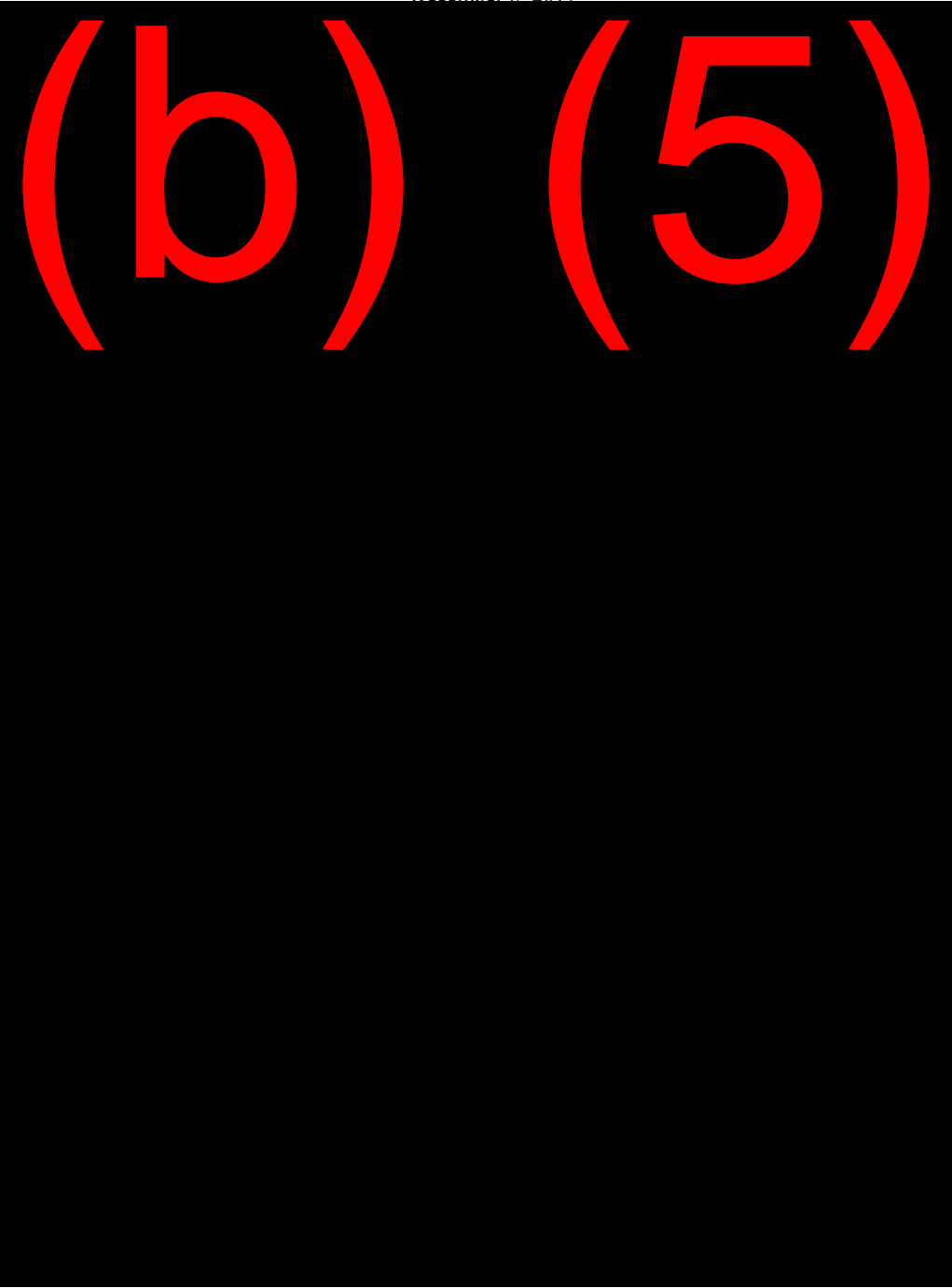




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DRAFT – Privileged and Confidential  
December 8, 2017

M-

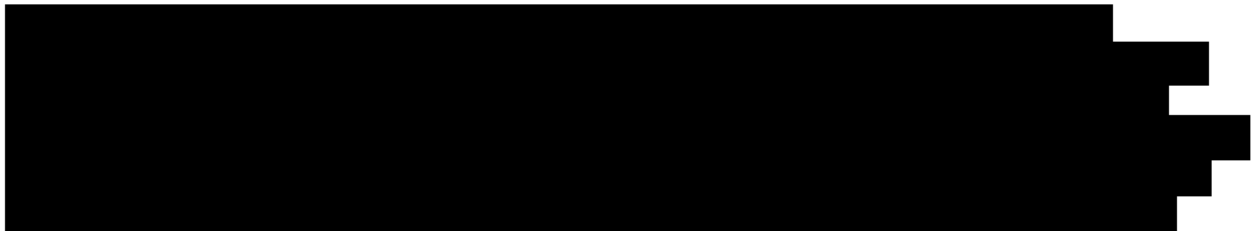
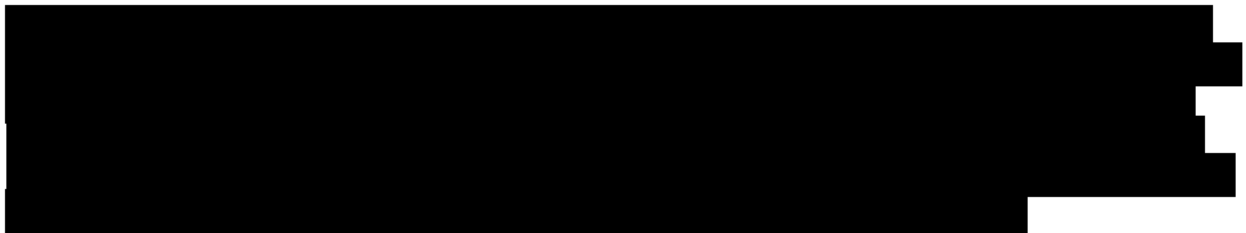
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

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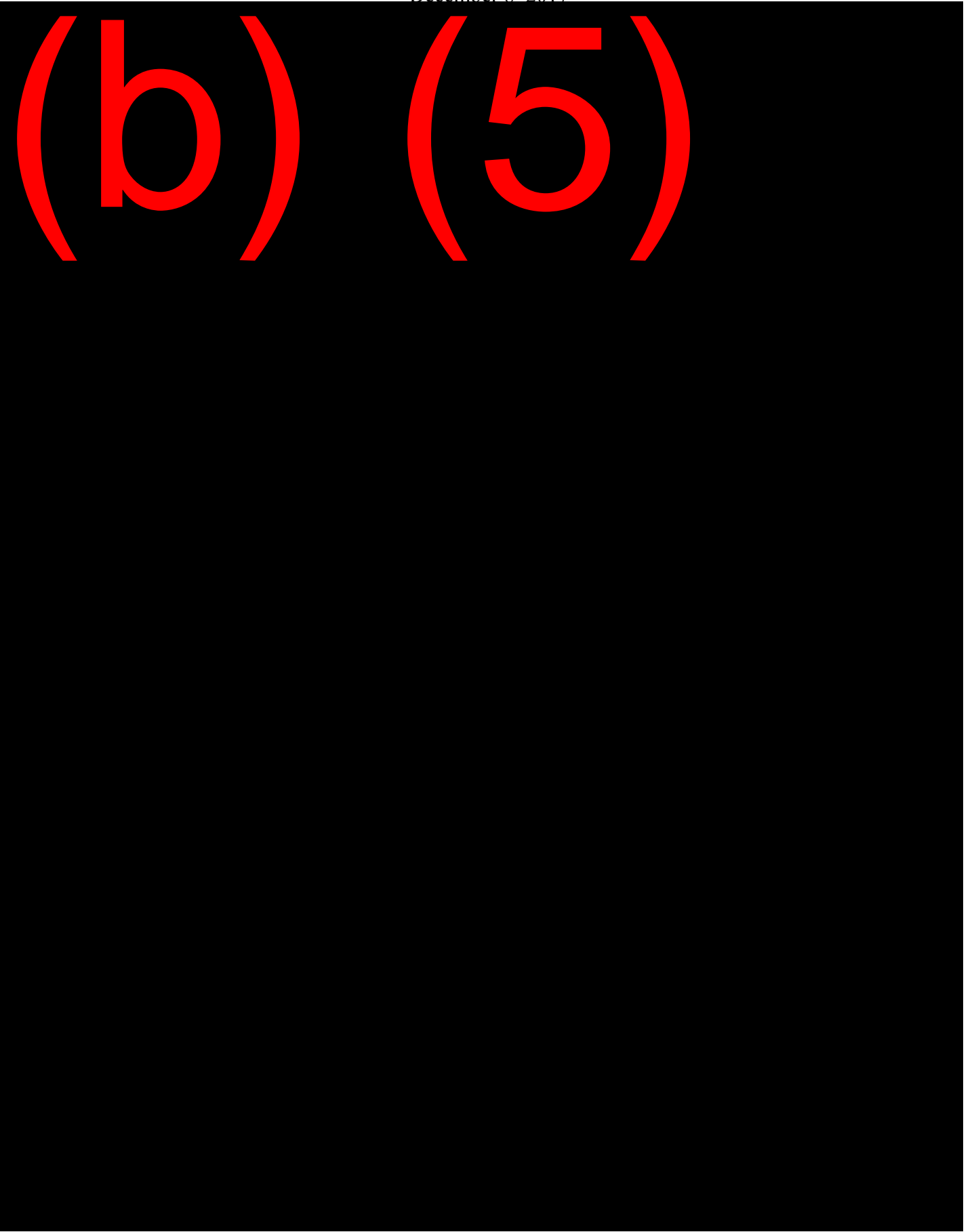
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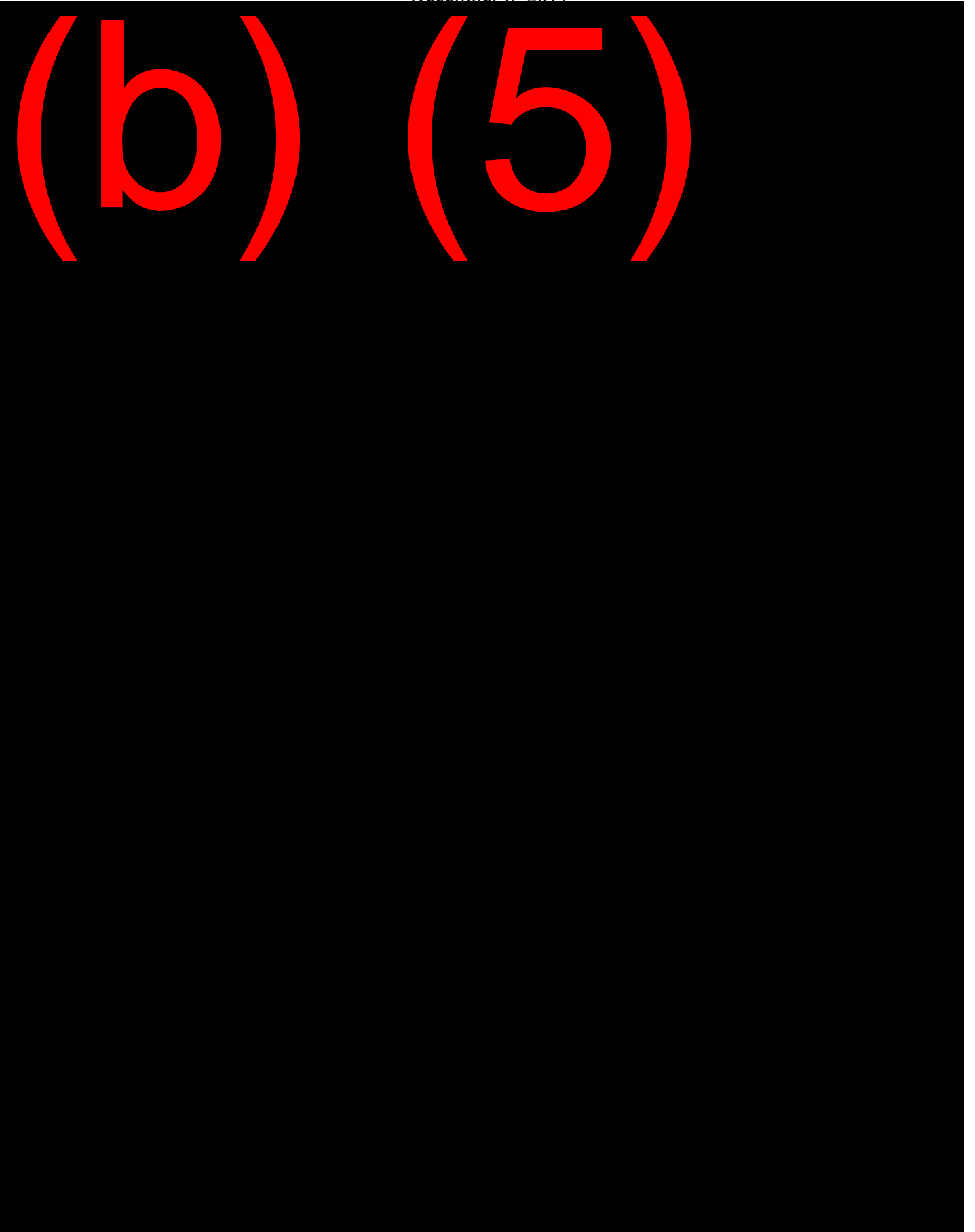
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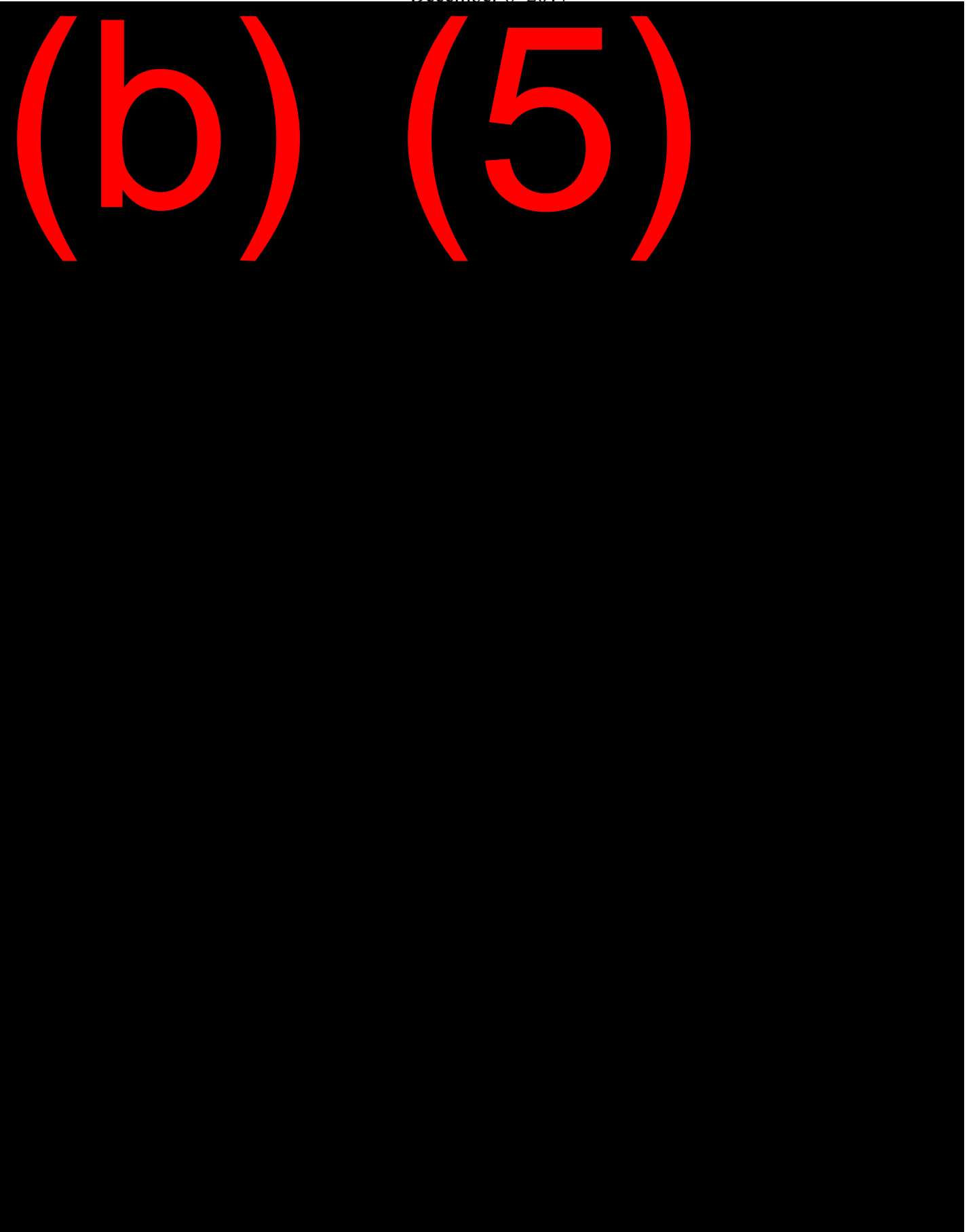
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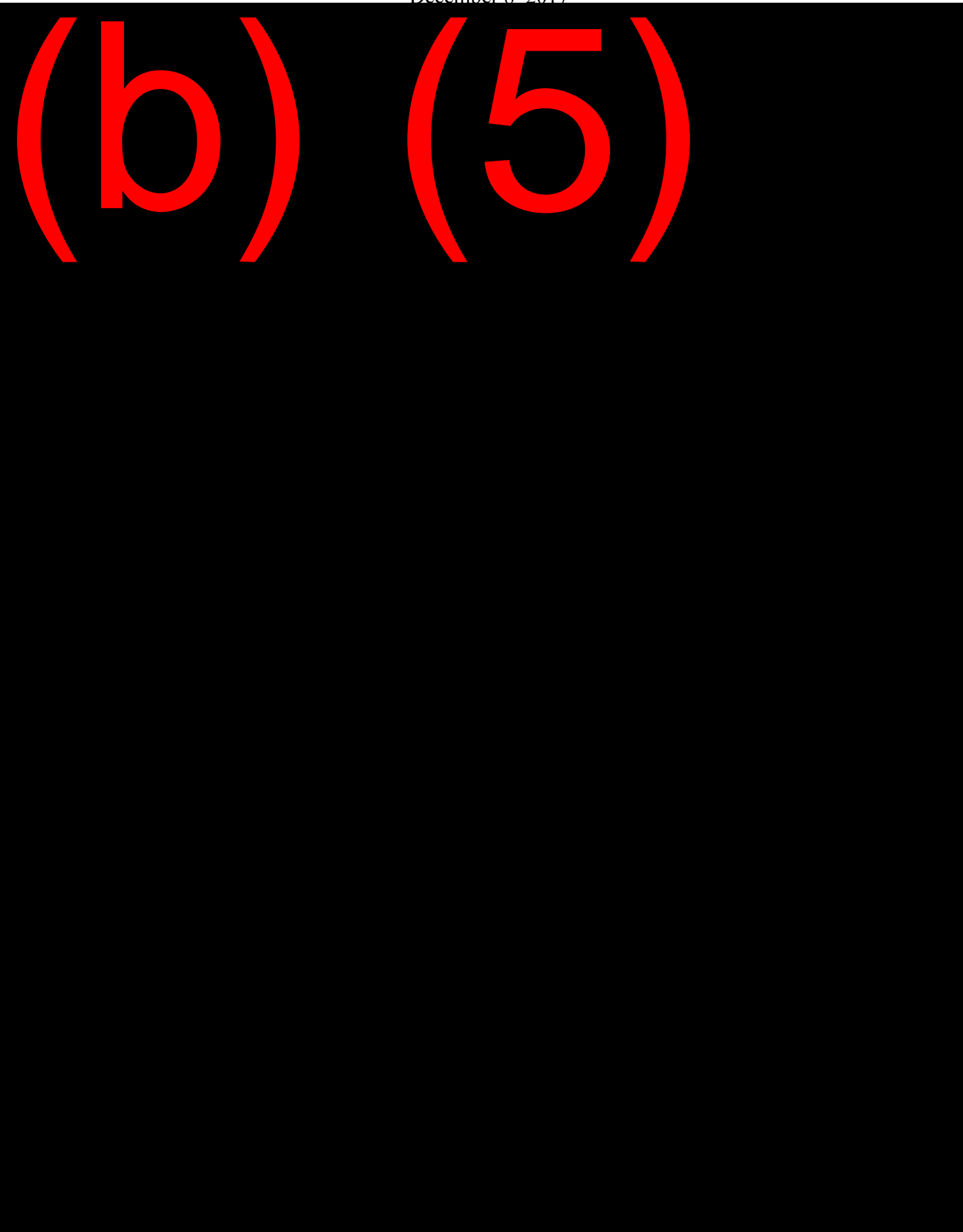
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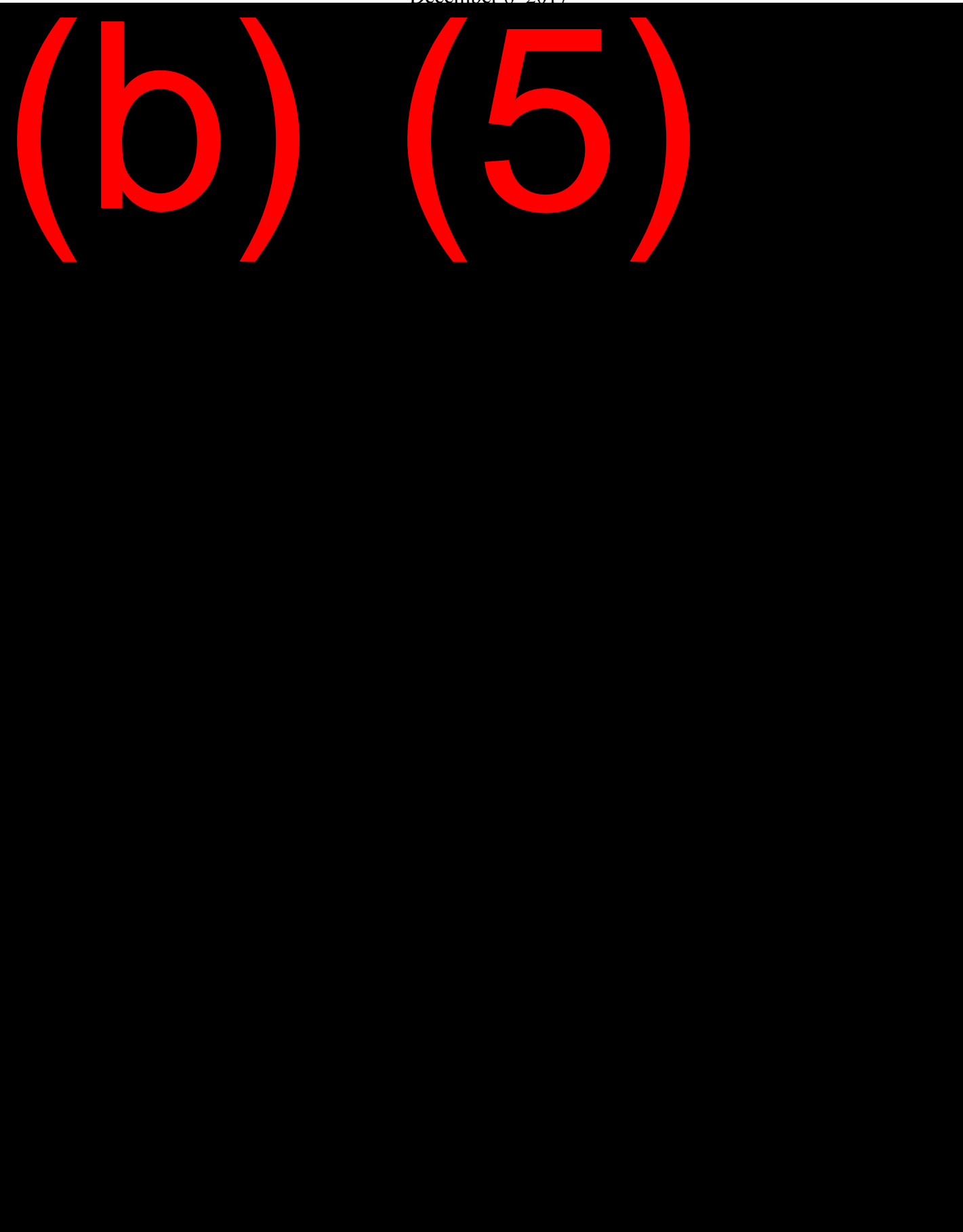


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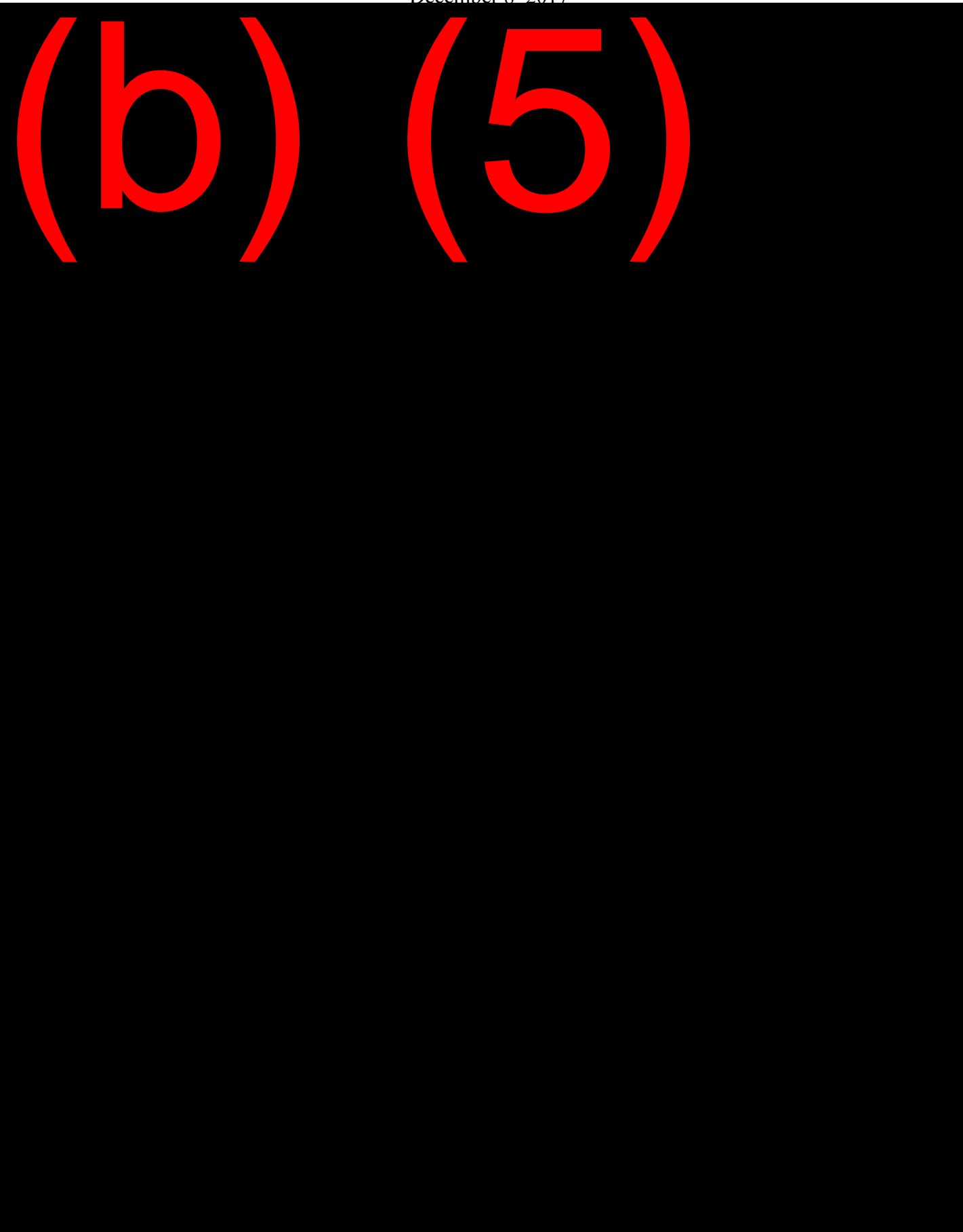




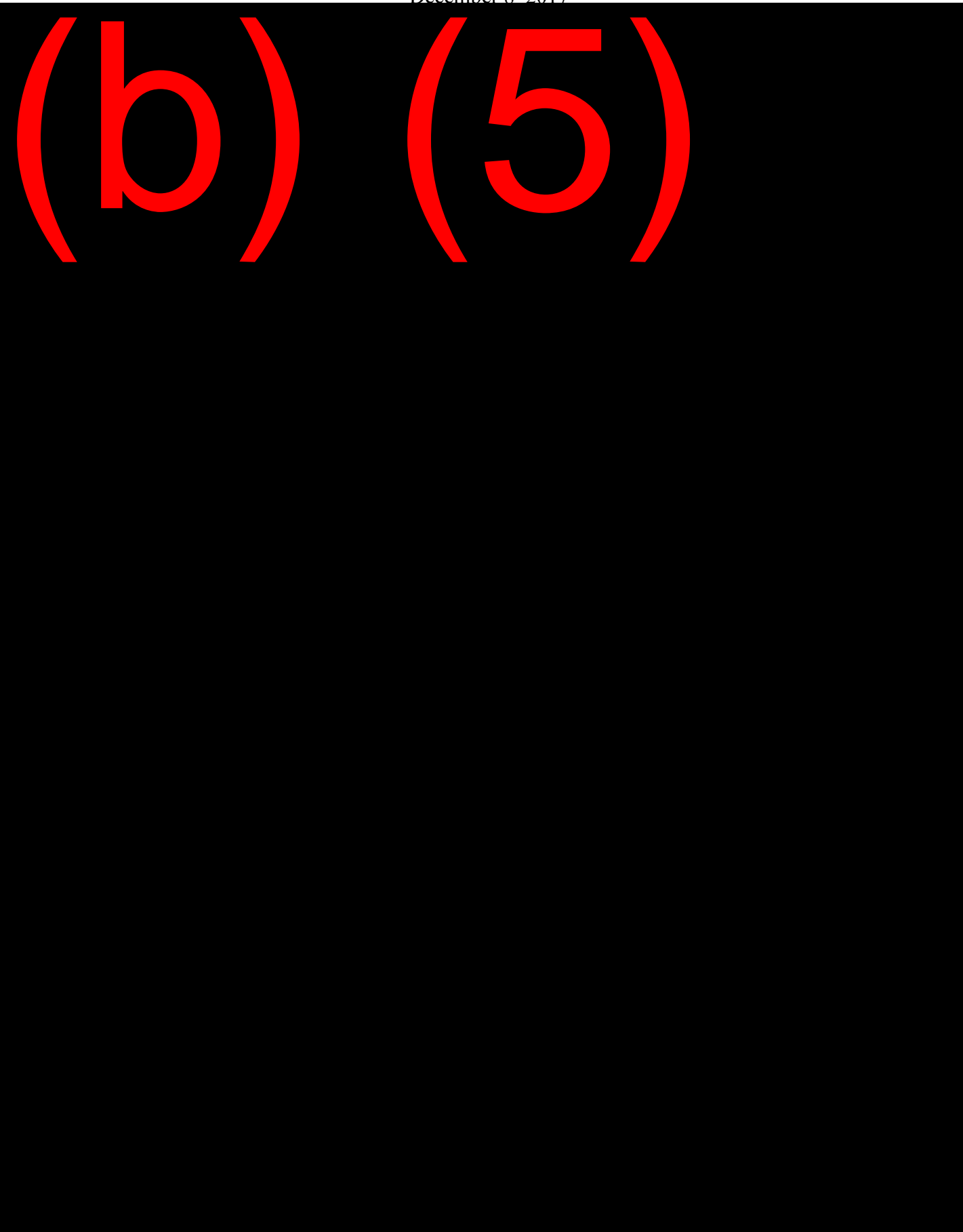
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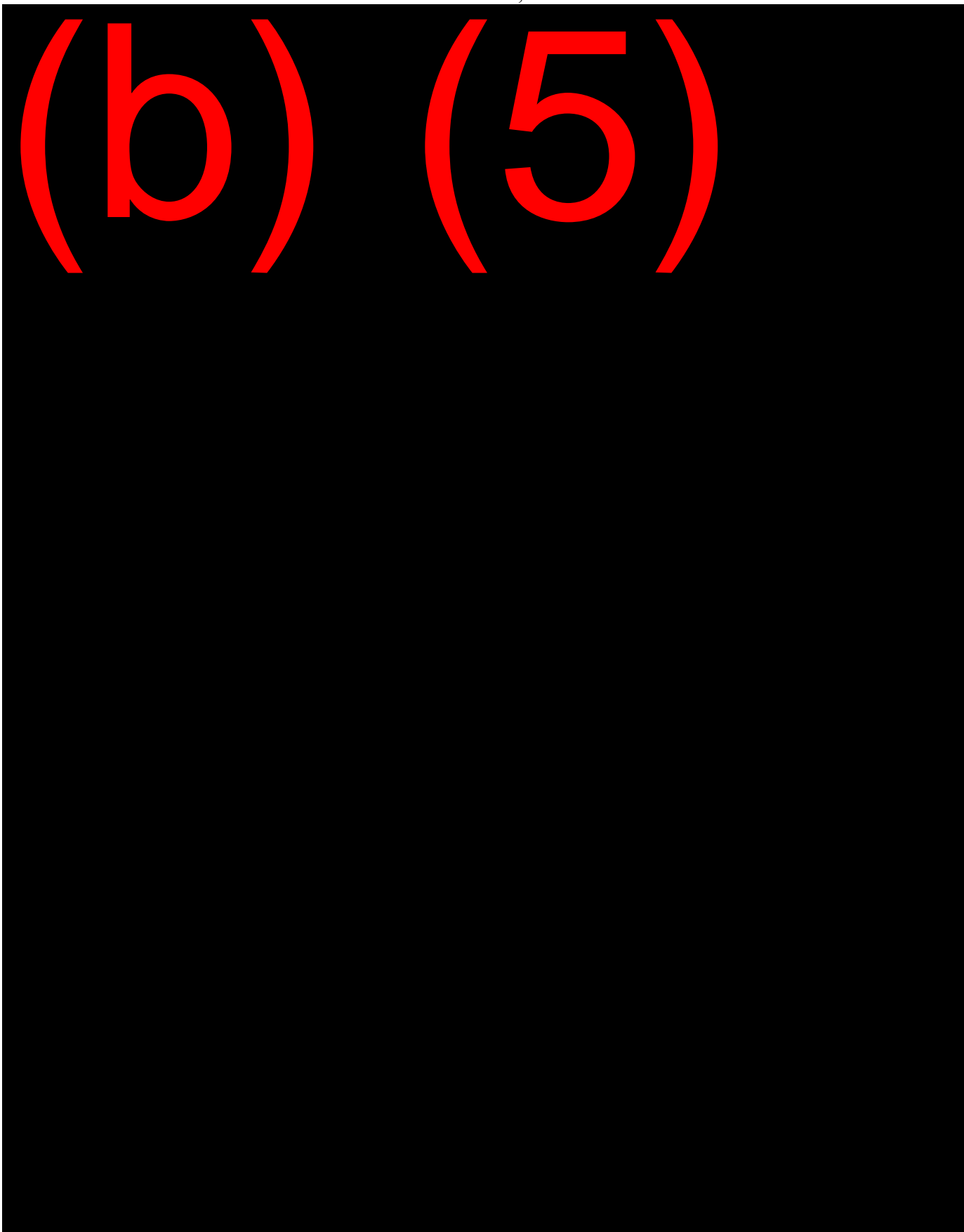
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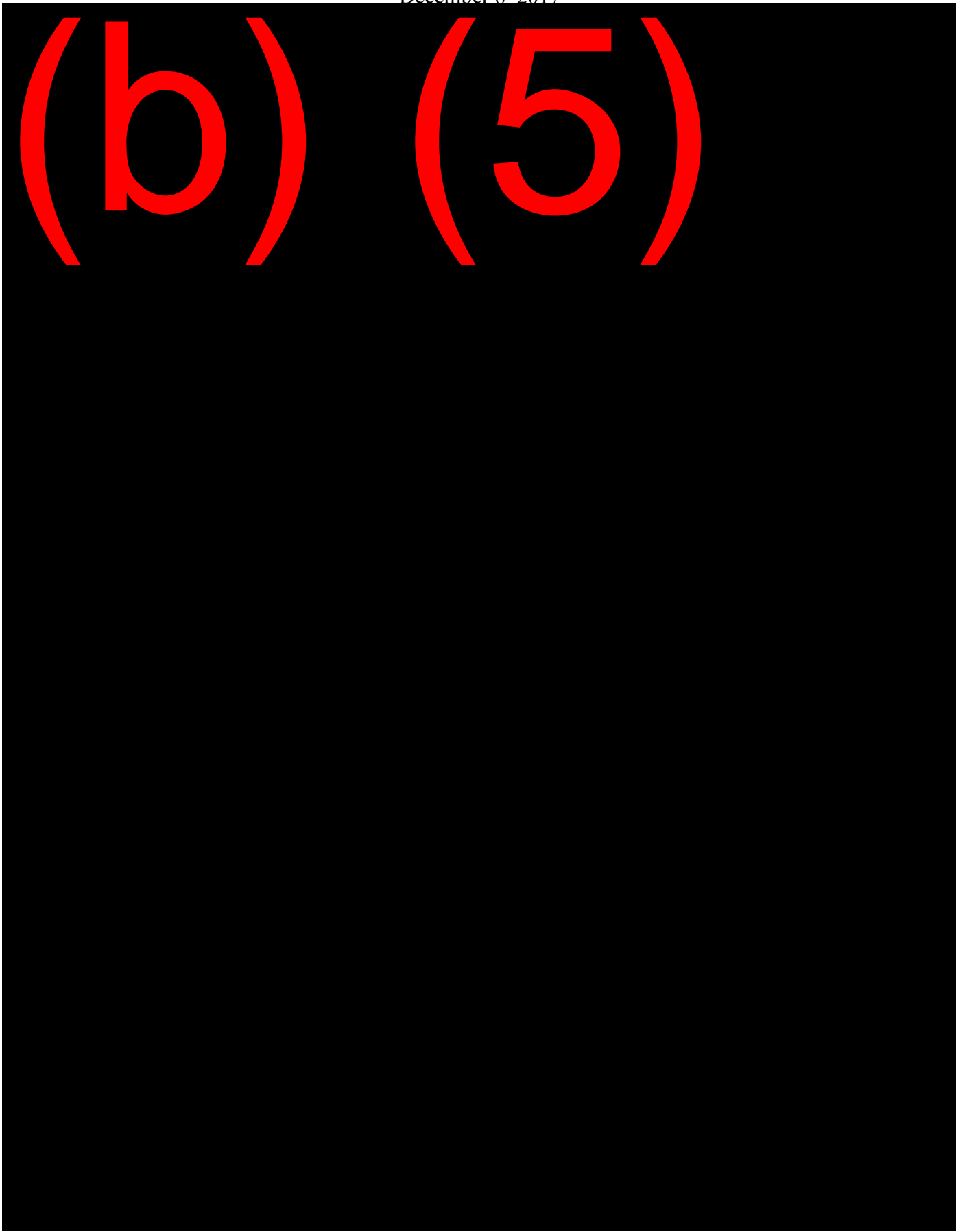
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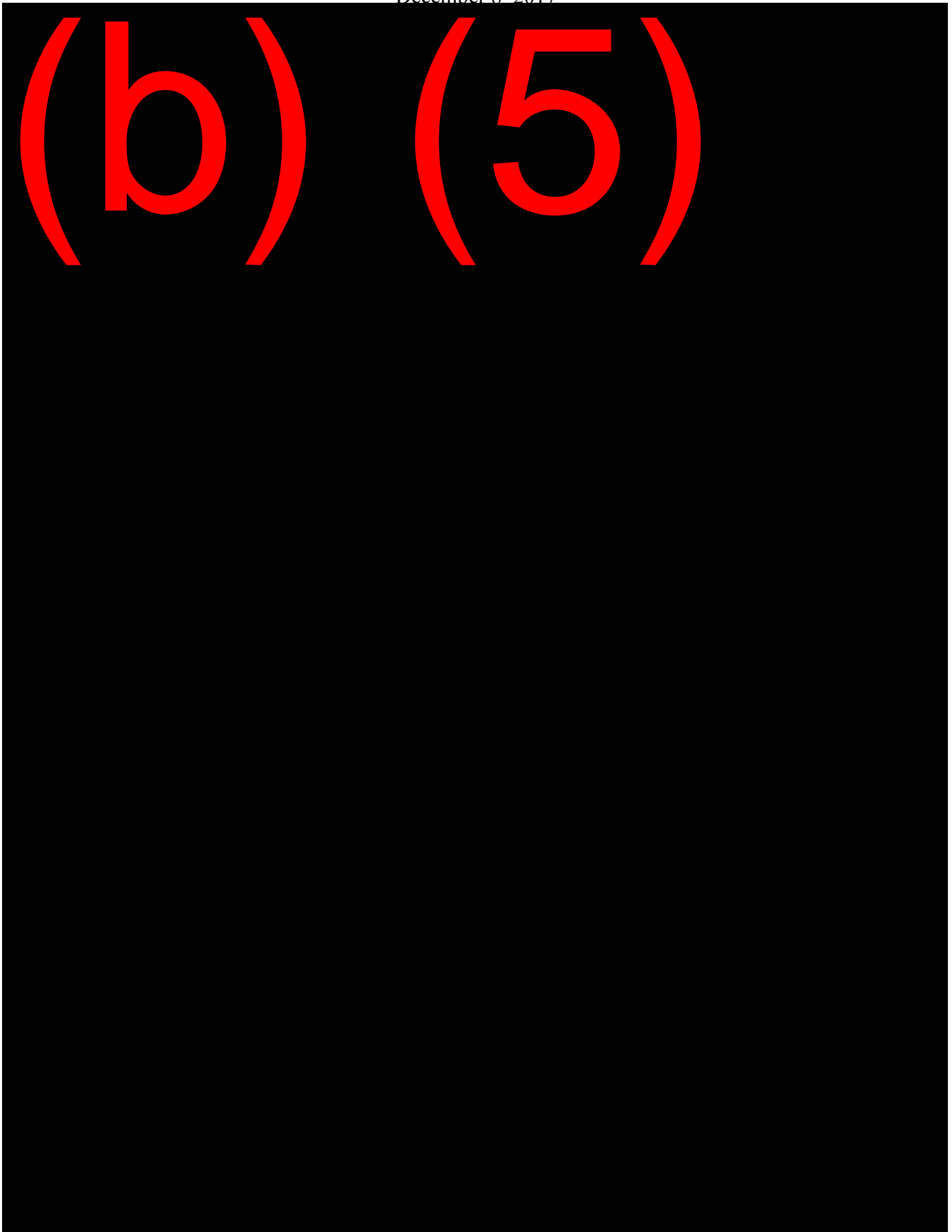
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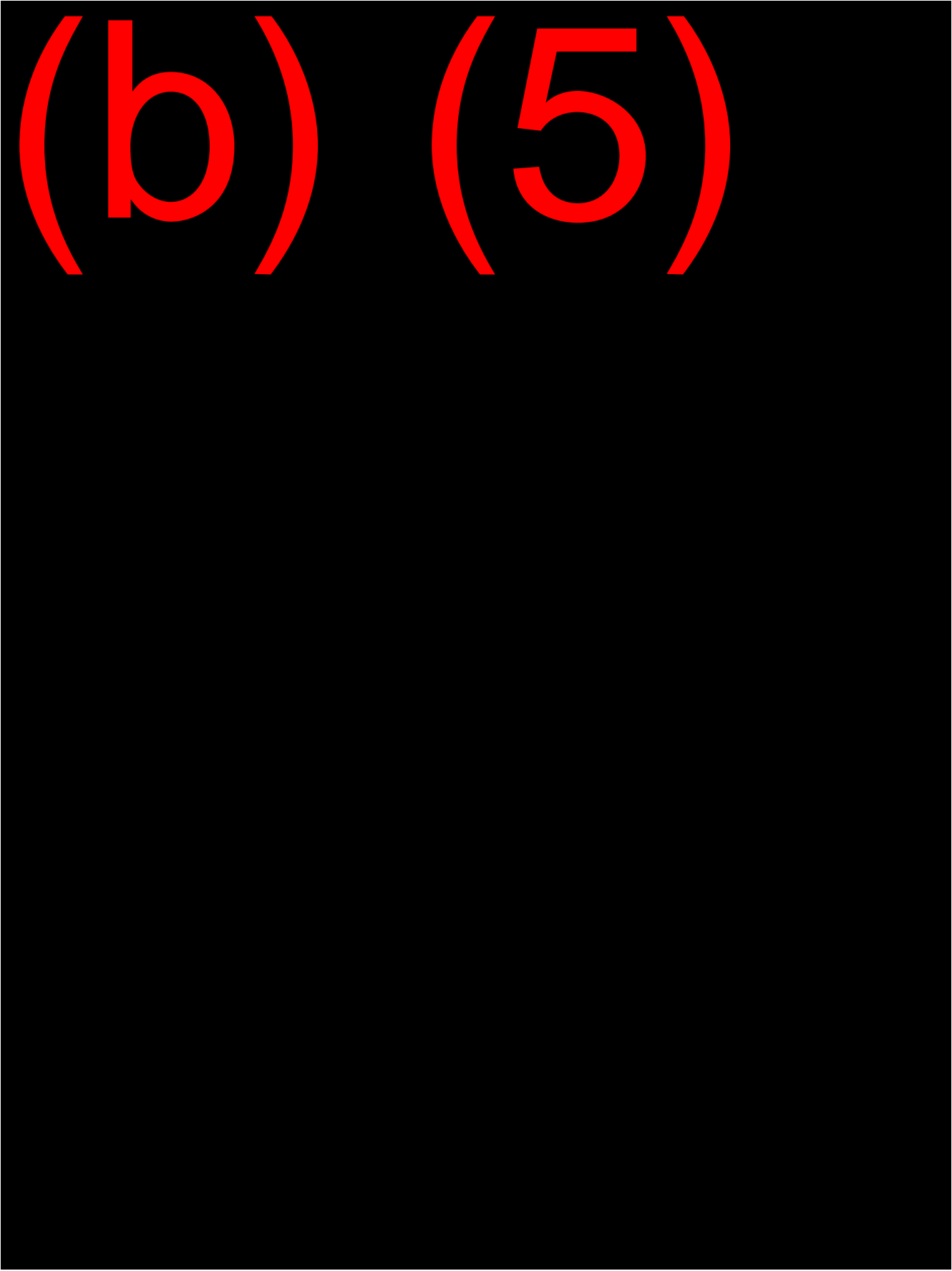
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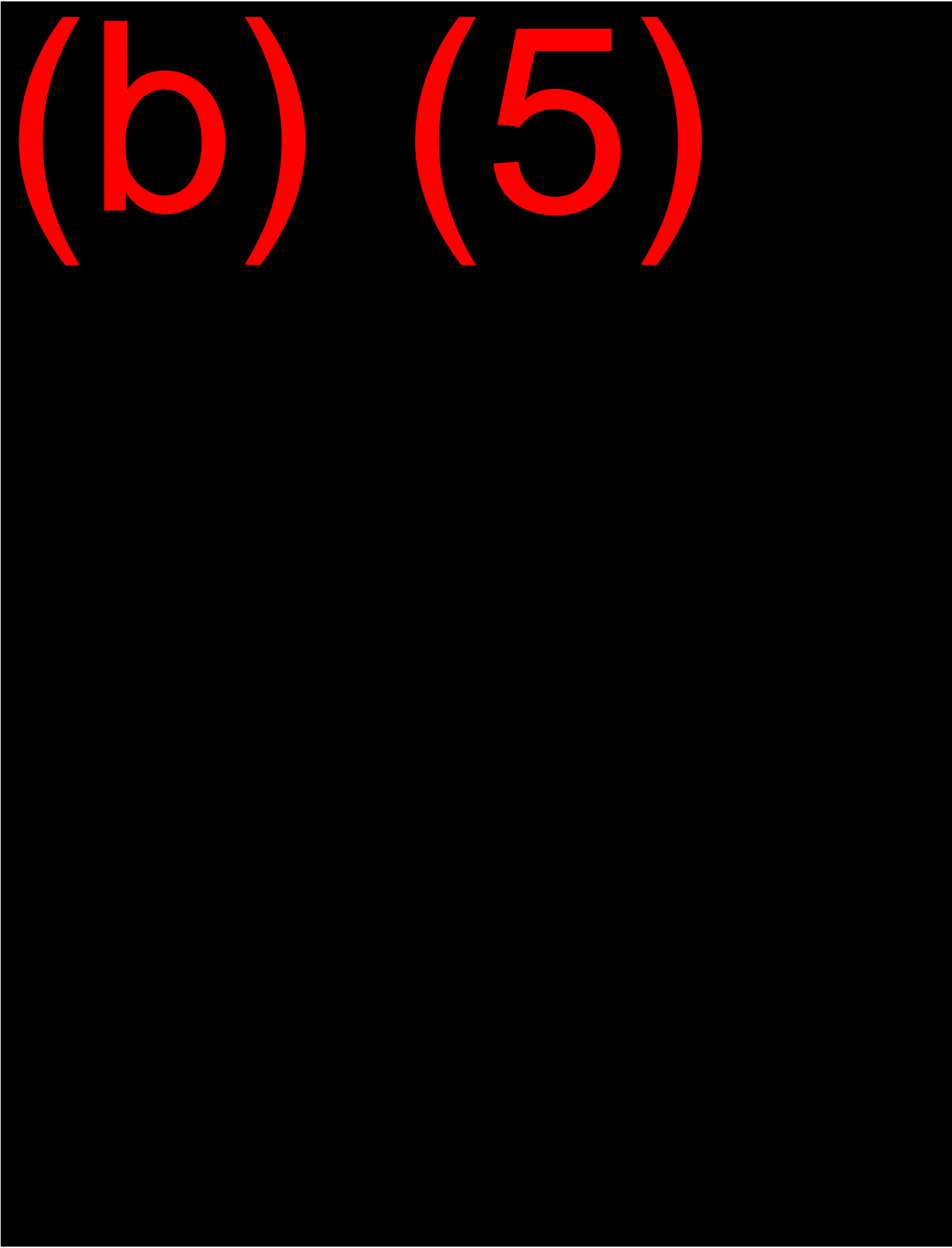
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(b) (5)



(b) (5) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

---

[Redacted text block]

(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

(b) (5)



---



(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:37 AM

# Conversation Contents

**Invitation: Twin Metals memo briefing @ Thu Dec 21, 2017 12:30pm - 1pm**  
(briana.collier@sol.doi.gov)

## Attachments:

/9. Invitation: Twin Metals memo briefing @ Thu Dec 21, 2017 12:30pm - 1pm  
(briana.collier@sol.doi.gov)/1.1 invite.ics  
/9. Invitation: Twin Metals memo briefing @ Thu Dec 21, 2017 12:30pm - 1pm  
(briana.collier@sol.doi.gov)/1.2 invite.ics

**Karen Hawbecker <karen.hawbecker@sol.doi.gov>**

**From:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 11:25:59 GMT-0700 (MST)  
**To:** briana.collier@sol.doi.gov, mleveret@blm.gov, marigrace.caminiti@sol.doi.gov, jkatusak@blm.gov, bsteed@blm.gov, jack.haugrud@sol.doi.gov, bwinston@blm.gov, mnedd@blm.gov  
**CC:** ymackthompson@blm.gov, lthurn@blm.gov  
**Subject:** Invitation: Twin Metals memo briefing @ Thu Dec 21, 2017 12:30pm - 1pm (briana.collier@sol.doi.gov)  
**Attachments:** invite.ics invite.ics

## Twin Metals memo briefing

[more details »](#)

**When** Thu Dec 21, 2017 12:30pm – 1pm Mountain Time  
**Where** SOL Conf Rm. 6342 (b) (5) participant code: (b) (5) ([map](#))  
**Video call** (b) (5)  
**Calendar** briana.collier@sol.doi.gov  
**Who**

- marigrace.caminiti@sol.doi.gov - organizer
- mleveret@blm.gov
- jkatusak@blm.gov
- daniel.jorjani@sol.doi.gov
- bsteed@blm.gov
- briana.collier@sol.doi.gov
- jack.haugrud@sol.doi.gov
- bwinston@blm.gov
- karen.hawbecker@sol.doi.gov
- mnedd@blm.gov
- ymackthompson@blm.gov - optional
- lthurn@blm.gov - optional

Going? [Yes](#) - [Maybe](#) - [No](#) [more options »](#)

Invitation from [Google Calendar](#)

You are receiving this email at the account briana.collier@sol.doi.gov because you are subscribed for invitations on calendar briana.collier@sol.doi.gov.

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More](#).



---

**Subject:** Twin Metals memo briefing  
**Location:** SOL Conf Rm. 6342 (b) (5) participant code: (b) (5)  
  
**Start:** Thu 12/21/2017 2:30 PM  
**End:** Thu 12/21/2017 3:00 PM  
**Show Time As:** Tentative  
  
**Recurrence:** (none)  
  
**Meeting Status:** Not yet responded  
  
**Organizer:** marigrace.caminiti@sol.doi.gov

-----  
Please do not edit this section of the description.

This event has a Google Hangouts video call.

Join: (b) (5)

View your event at  
<https://www.google.com/calendar/event?action=VIEW&eid=N3BnbG9rZjV1bmJjaGlibzMzYTF0M3N1M2MgYnJpYW5hLmNvbGxpZXJAc29sLmRvaS5nb3Y&tok=MzAjbWYyYWNlLnNhbnVuaXRpQHNvbC5kb2kuZ292NzIxNTY5NmFhOGUxNmI3MDVjMzcxMWlxZjRjNTJhMmQyYjhmODc5MA&ctz=America/Denver&hl=en>.

---

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**Location:** SOL Conf Rm. 6342 (b) (5) participant code: (b) (5)  
**Start:** Thu 12/21/2017 2:30 PM  
**End:** Thu 12/21/2017 3:00 PM  
**Show Time As:** Tentative  
**Recurrence:** (none)  
**Meeting Status:** Not yet responded  
**Organizer:** marigrace.caminiti@sol.doi.gov

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Please do not edit this section of the description.

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(b) (5)

View your event at  
<https://www.google.com/calendar/event?action=VIEW&eid=N3BnbG9rZjV1bmJjaGlibzMzYTF0M3N1M2MgYnJpYW5hLmNvbGxpZXJAc29sLmRvaS5nb3Y&tok=MzAjbWFiYWdyYWNlMmNhbnWluaXRpQHNVbC5kb2kuZ292NzlxNTY5NmFhOGUxNmI3MDVjMzcxMWlxZjRjNTJhMmQyYjhmODc5MA&ctz=America/Denver&hl=en>.

-----

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:37 AM

# Conversation Contents

## Twin Metals: Draft letter from BLM to FS

### Attachments:

/10. Twin Metals: Draft letter from BLM to FS/1.1 2017.12.21 Twin Metals DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion (1).doc

/10. Twin Metals: Draft letter from BLM to FS/2.1 2017.12.21 Twin Metals DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion.doc

---

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 11:21:09 GMT-0700 (MST)  
**To:** Jack Haugrud <jack.haugrud@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Twin Metals: Draft letter from BLM to FS  
**Attachments:** 2017.12.21 Twin Metals DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion (1).doc

Jack, Here's a new clean version of the draft letter to Forest Service from BLM that accepts the changes from OGC. I'll bring copies of this to the 2 pm to show BLM and to discuss it. We have not shared this with BLM yet. --Karen

---

## "Collier, Briana" <briana.collier@sol.doi.gov>

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 21 2017 13:27:12 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Twin Metals: Draft letter from BLM to FS  
**Attachments:** 2017.12.21 Twin Metals DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion.doc

Karen, Here is the draft letter, now addressed to Chief Tooke. Thank you.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

\*New Phone: (505) 248-5604

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On Thu, Dec 21, 2017 at 11:21 AM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Jack, Here's a new clean version of the draft letter to Forest Service from BLM that accepts the changes from OGC. I'll bring copies of this to the 2 pm to show BLM and to discuss it. We have not shared this with BLM yet. --  
Karen



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.es.blm.gov>



DRAFT ATTORNEY-CLIENT PRIVILEGE—DO NOT RELEASE

Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b) (5)



Sincerely,

Mitchell Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.es.blm.gov>



DRAFT- ATTORNEY-CLIENT PRIVILEGE—DO NOT RELEASE

Tony Tooke

Chief

USDA Forest Service

201 14th Street, NW

Washington, D.C. 20250

Dear Ms. Atkinson:

(b) (5)  
[Redacted text block]



[Redacted text block]

[Redacted text block]

[Redacted text block]



(b) (5)



Sincerely,

Mitchell Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:37 AM

# Conversation Contents

## Superior NF questions

**"Winston, Beverly" <bwinston@blm.gov>**

---

**From:** "Winston, Beverly" <bwinston@blm.gov>  
**Sent:** Wed Dec 20 2017 15:55:04 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>  
**CC:** Mitchell Leverette <mleveret@blm.gov>, Jeff Krauss <jkrauss@blm.gov>  
**Subject:** Superior NF questions

Hi,  
I have a few questions about the M-Opinion that I need to resolve before we can approve a short news release. Can I email them to you or are you available to discuss them?  
Thanks,  
Bev

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 15:55:53 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Fwd: Superior NF questions

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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----- Forwarded message -----

From: **Winston, Beverly** <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
Date: Wed, Dec 20, 2017 at 3:55 PM  
Subject: Superior NF questions  
To: Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Cc: Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>

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Thanks,  
Bev

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

---

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Wed Dec 20 2017 15:57:09 GMT-0700 (MST)  
**To:** "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss  
<[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>, Karen Hawbecker  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**CC:**  
**Subject:** Re: Superior NF questions

Hi Bev, Has there been a decision to issue a news release? We were not aware that there would be one. Thanks.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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On Wed, Dec 20, 2017 at 3:55 PM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

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Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**"Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>**

---

**From:** "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**Sent:** Wed Dec 20 2017 16:00:41 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**CC:** Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Superior NF questions

So it will be a relatively short release, sent out in MN only.  
Mind if I send you my questions? Can send you the news release once it clears Mitch and WO100. AD300 is good with it, but agrees (b) (5).

On Wed, Dec 20, 2017 at 5:57 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Hi Bev, Has there been a decision to issue a news release? We were not aware that there would be one. Thanks.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 16:07:49 GMT-0700 (MST)  
**To:** "Winston, Beverly" <bwinston@blm.gov>  
Mitchell Leverette <mleveret@blm.gov>, Jeff Krauss  
<jkrauss@blm.gov>, Karen Hawbecker  
<karen.hawbecker@sol.doi.gov>  
**CC:**  
**Subject:** Re: Superior NF questions

Okay, thanks for the info.

Yes, please send us your questions, and draft news release when you are able.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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On Wed, Dec 20, 2017 at 4:00 PM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

So it will be a relatively short release, sent out in MN only.

Mind if I send you my questions? Can send you the news release once it clears Mitch and WO100. AD300 is good with it, but agrees (b) (5).

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Bev

--

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Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**Karen Hawbecker** <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

---

**From:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Wed Dec 20 2017 22:08:29 GMT-0700 (MST)  
**To:** [briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)  
**Subject:** Fwd: Superior NF questions

Briana, (b) (5)

Let me know if you get any push back or if you think I should talk to anyone at BLM about this. Thank you. —Karen

Sent from my iPad

Begin forwarded message:

**From:** Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Date:** December 20, 2017 at 7:12:11 PM EST  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Fwd: Superior NF questions

(b) (5)

----- Original Message -----

From: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Date: Wed, December 20, 2017 6:48 PM -0500  
To: Jack Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>

Subject: Fwd: Superior NF questions

Jack, BLM wants to issue a news release about the M-Opinion in Minnesota only. We've asked to see the draft news release they have in mind. I'll let you know when we receive it. --Karen

----- Forwarded message -----

From: **Collier, Briana** <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

Date: Wed, Dec 20, 2017 at 6:07 PM

Subject: Re: Superior NF questions

To: "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>

Cc: Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

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Yes, please send us your questions, and draft news release when you are able.

Briana Collier  
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[Albuquerque, NM 87102](#)

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Thanks,  
Bev

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

---

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Thu Dec 21 2017 08:59:11 GMT-0700 (MST)  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Superior NF questions

Hi Karen, I spoke with Bev and she said that DOI comms asked BLM to put together a news release for the local area, and that she thought the order came from the Deputy Secretary's office. She said she would respond to my email copying the DOI comms folks so that we can figure out who ordered the press release in the first place. Thank you, Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Wed, Dec 20, 2017 at 10:08 PM, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Briana, Could you please tell Bev that they (b) (5)  
(b) (5) Let me know if you get  
any push back or if you think I should talk to anyone at BLM about this. Thank you. —Karen

Sent from my iPad

Begin forwarded message:

**From:** Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Date:** December 20, 2017 at 7:12:11 PM EST  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Fwd: Superior NF questions

(b) (5)

----- Original Message -----

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Date:** Wed, December 20, 2017 6:48 PM -0500  
**To:** Jack Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Subject:** Fwd: Superior NF questions

Jack, BLM wants to issue a news release about the M-Opinion in Minnesota only. We've asked to see the draft news release they have in mind. I'll let you know when we receive it. --Karen

----- Forwarded message -----

**From:** Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Date:** Wed, Dec 20, 2017 at 6:07 PM  
**Subject:** Re: Superior NF questions  
**To:** "Winston, Beverly" <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
**Cc:** Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

Okay, thanks for the info.

Yes, please send us your questions, and draft news release when you are able.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
[505 Marquette Ave., NW Ste. 1800  
Albuquerque, NM 87102](https://www.doi.gov/505-Marquette-Ave.-NW-Ste-1800-Albuquerque-NM-87102)

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On Wed, Dec 20, 2017 at 4:00 PM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:  
So it will be a relatively short release, sent out in MN only.  
Mind if I send you my questions? Can send you the news release once it clears Mitch and WO100. AD300 is good with it, but agrees (b) (5) .

On Wed, Dec 20, 2017 at 5:57 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Hi Bev, Has there been a decision to issue a news release? We were not aware that there would be one. Thanks.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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On Wed, Dec 20, 2017 at 3:55 PM, Winston, Beverly <[bwinston@blm.gov](mailto:bwinston@blm.gov)> wrote:

Hi,  
I have a few questions about the M-Opinion that I need to resolve before we can approve a short news release. Can I email them to you or are you available to discuss them?  
Thanks,  
Bev

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

Bev Winston  
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---

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

**Sent:** Thu Dec 21 2017 09:03:35 GMT-0700 (MST)  
**To:** "Winston, Beverly" <bwinston@blm.gov>  
**CC:** Mitchell Leverette <mleveret@blm.gov>, Jeff Krauss <jkrauss@blm.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Superior NF questions

Hi Bev, Have Dan Jorjani, the Acting Solicitor, and Deputy Secretary David Bernhardt approved the issuance of a BLM press release? (b) (5)

Would you please let us know your contact in DOI comms so that we can follow up on this?  
Thanks very much, Briana

Briana Collier  
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Thanks,  
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Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

--

Bev Winston  
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202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:37 AM

# Conversation Contents

## M Opinion Qs

**"Winston, Beverly" <bwinston@blm.gov>**

---

**From:** "Winston, Beverly" <bwinston@blm.gov>  
**Sent:** Wed Dec 20 2017 16:17:43 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>  
**CC:** Mitchell Leverette <mleveret@blm.gov>, Jeff Krauss <jkrauss@blm.gov>  
**Subject:** M Opinion Qs

Here they are:

Does the M-Opinion mean that the BLM **must** review these lease denials?

Does BLM still need Forest Service consent?

How will this Opinion affect TMM's lawsuit? (I assume we cannot comment on it)

Does this opinion have any impact on the withdrawal application? (I assume no, but probably good to ask)

--

Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 16:26:27 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Fwd: M Opinion Qs

Here are the BLM's questions for the Twin Metals M-Op. I can work on some answers, along the lines of our Q&A answers, tomorrow morning.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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----- Forwarded message -----

From: **Winston, Beverly** <[bwinston@blm.gov](mailto:bwinston@blm.gov)>  
Date: Wed, Dec 20, 2017 at 4:17 PM  
Subject: M Opinion Qs  
To: Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Cc: Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>

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Bev Winston  
Bureau of Land Management | Communications  
202-208-4602 | [bwinston@blm.gov](mailto:bwinston@blm.gov)

**Karen Hawbecker** <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

---

**From:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Wed Dec 20 2017 22:05:14 GMT-0700 (MST)  
**To:** [briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)  
**Subject:** Fwd: M Opinion Qs

Briana, Could you please share what Gary sent to the Department Comms with Bev? Thanks.  
—Karen

Sent from my iPad

Begin forwarded message:

**From:** Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Date:** December 20, 2017 at 7:10:24 PM EST  
**To:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Fwd: M Opinion Qs

Please forward to them what Gary sent to Departmental Comms too.

----- Original Message -----

From: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Date: Wed, December 20, 2017 6:46 PM -0500  
To: Jack Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Subject: Fwd: M Opinion Qs



Jack, BLM sent these questions to us re: the Twin Metals opinion. Briana will prepare answers along the lines we have in our Q&A document. --Karen

----- Forwarded message -----

From: **Collier, Briana** <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Date: Wed, Dec 20, 2017 at 6:26 PM  
Subject: Fwd: M Opinion Qs  
To: Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

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Subject: M Opinion Qs  
To: Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Cc: Mitchell Leverette <[mleveret@blm.gov](mailto:mleveret@blm.gov)>, Jeff Krauss <[jkrauss@blm.gov](mailto:jkrauss@blm.gov)>

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## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:37 AM

## Conversation Contents

## Fw: Twin Metals Talking Points

**Attachments:**

/13. Fw: Twin Metals Talking Points/4.1 2017.12.20 Twin Metals Talking Points.docx

**Kevin Haugrud** <jack.haugrud@sol.doi.gov>

**From:** Kevin Haugrud <jack.haugrud@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 06:47:40 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**CC:** Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**Subject:** Fw: Twin Metals Talking Points

Here is Gary's draft. Please provide comments directly back to Gary.

**From:** Lawkowski, Gary <gary.lawkowski@sol.doi.gov>  
**Sent:** Tuesday, December 19, 2017 2:00 PM  
**To:** Jorjani, Daniel; Kevin Haugrud  
**Subject:** Twin Metals Talking Points

Comms has requested a one-pager of talking points on the Twin Metals opinion. Given today's focus on critical minerals, here is what I've put together. Let me know what you think.

Sincerely,

Gary Lawkowski  
Counselor to the Solicitor  
Department of the Interior  
[Gary.Lawkowski@sol.doi.gov](mailto:Gary.Lawkowski@sol.doi.gov)  
202-208-7340

## Twin Metals Talking Points

(b) (5)

1. [REDACTED]

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97. [REDACTED]

98. [REDACTED]

99. [REDACTED]

100. [REDACTED]

(b) (5)

**"Lawkowski, Gary" <gary.lawkowski@sol.doi.gov>**

---

**From:** "Lawkowski, Gary" <gary.lawkowski@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 12:32:47 GMT-0700 (MST)  
**To:** Kevin Haugrud <jack.haugrud@sol.doi.gov>  
Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Briana Collier  
**CC:** <briana.collier@sol.doi.gov>, Richard McNeer  
<richard.mcneer@sol.doi.gov>  
**Subject:** Re: Fw: Twin Metals Talking Points

I think Comms is hoping to have talking points back today. Let me know what you all think.

Sincerely,

Gary Lawkowski

On Wed, Dec 20, 2017 at 8:47 AM, Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
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**Twin Metals Talking Points**

(b) (5)

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Gary Lawkowski  
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202-208-7340

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 13:29:07 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Fw: Twin Metals Talking Points

Karen,

My only comment on Gary's talking points would (b) (5)

(b) (5)

Thanks very much,  
Briana

Briana Collier  
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*Department of the Interior*  
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202-208-7340

### **Twin Metals Talking Points**

(b) (5)

(b) (5)

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 14:24:21 GMT-0700 (MST)  
**To:** Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer  
**CC:** <richard.mcneer@sol.doi.gov>, Kevin Haugrud  
<jack.haugrud@sol.doi.gov>  
**Subject:** Re: Fw: Twin Metals Talking Points  
**Attachments:** 2017.12.20 Twin Metals Talking Points.docx

Gary, I've attached the talking points with my suggested edits in redline. I would caution (b) (5)

. Thanks. --  
Karen

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Sincerely,

*Gary Lawkowski*  
*Counselor to the Solicitor*  
*Department of the Interior*  
[Gary.Lawkowski@sol.doi.gov](mailto:Gary.Lawkowski@sol.doi.gov)  
202-208-7340

**Twin Metals Talking Points**

(b) (5)

(b) (5)



## Twin Metals Talking Points

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)



# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:37 AM

# Conversation Contents

## Draft Twin Metals talking points and Qs & As

### Attachments:

/14. Draft Twin Metals talking points and Qs & As/1.1 2017.12.15 clean Twin Metals - Talking points\_Q&A.docx

/14. Draft Twin Metals talking points and Qs & As/4.1 2017.12.15 clean Twin Metals - Talking points\_Q&A.docx

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 13:39:20 GMT-0700 (MST)  
**To:** Jack Haugrud <jack.haugrud@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**Subject:** Draft Twin Metals talking points and Qs & As  
**Attachments:** 2017.12.15 clean Twin Metals - Talking points\_Q&A.docx

Jack, I've attached the draft talking points and Qs & As. Please let us know if you have edits or comments or if you think of any other questions we should address. Thank you. --Karen

## "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 14:28:33 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**Subject:** Re: Draft Twin Metals talking points and Qs & As

Marigrace has informed me that we won't be issuing the m-opinion until next Friday. Given the reprieve, I'll take a look and get back to you on Monday.

On Fri, Dec 15, 2017 at 3:39 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
| Jack, I've attached the draft talking points and Qs & As. Please let us know if you have edits or comments or if you think of any other questions we should address. Thank you. --Karen

## "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 14:32:04 GMT-0700 (MST)

**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**Subject:** Re: Draft Twin Metals talking points and Qs & As

Sounds good. Thanks, Jack.

On Fri, Dec 15, 2017 at 4:28 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
Marigrace has informed me that we won't be issuing the m-opinion until next Friday. Given the reprieve, I'll take a look and get back to you on Monday.

On Fri, Dec 15, 2017 at 3:39 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:  
Jack, I've attached the draft talking points and Qs & As. Please let us know if you have edits or comments or if you think of any other questions we should address. Thank you. --Karen

---

**Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**

---

**From:** Kevin Haugrud <jack.haugrud@sol.doi.gov>  
**Sent:** Wed Dec 20 2017 06:46:39 GMT-0700 (MST)  
**To:** Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Fw: Draft Twin Metals talking points and Qs & As  
**Attachments:** 2017.12.15 clean Twin Metals - Talking points\_Q&A.docx

Gary: Attached are draft Qand As and talking point that Briana and DMR prepared. I think I forgot to forward them to you earlier. Please take a look at them and incorporate them into your talking points. Briana, Karen and Richard, I will forward Gary's draft talking points separately.

---

**From:** Hawbecker, Karen <karen.hawbecker@sol.doi.gov>  
**Sent:** Friday, December 15, 2017 3:39 PM  
**To:** Jack Haugrud  
**Cc:** Briana Collier; Richard McNeer  
**Subject:** Draft Twin Metals talking points and Qs & As

---

Jack, I've attached the draft talking points and Qs & As. Please let us know if you have edits or comments or if you think of any other questions we should address. Thank you. --Karen

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

**Q: Is this M-Opinion a leasing decision?**

(b) (5) [REDACTED]

(b) (5) [Redacted text block]

[Redacted text block]

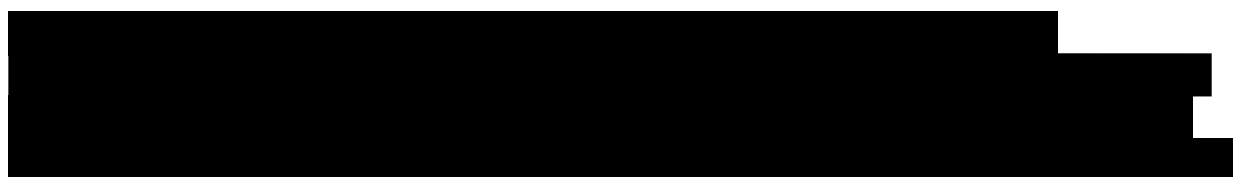

[Redacted text block]

[Redacted text block]

[Redacted text block]



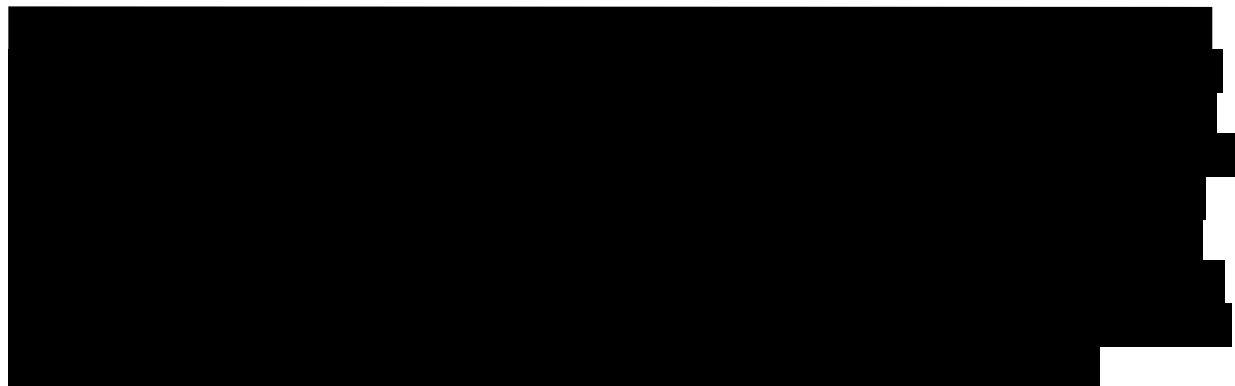


[Redacted text block]

(b) (5)





(b) (5)



**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

(b) (5) [REDACTED]

(b) (5) [Redacted text block]

[Redacted text block]

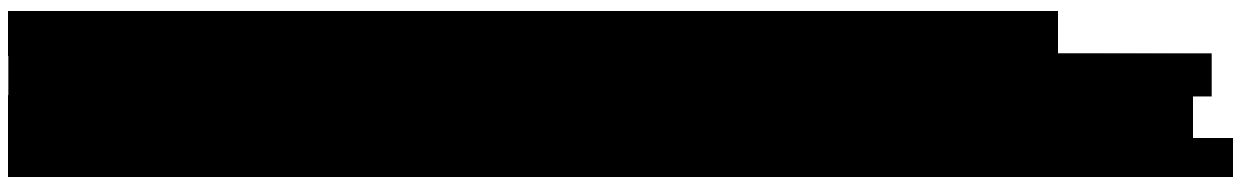

[Redacted text block]

[Redacted text block]

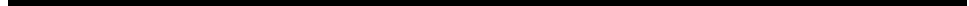


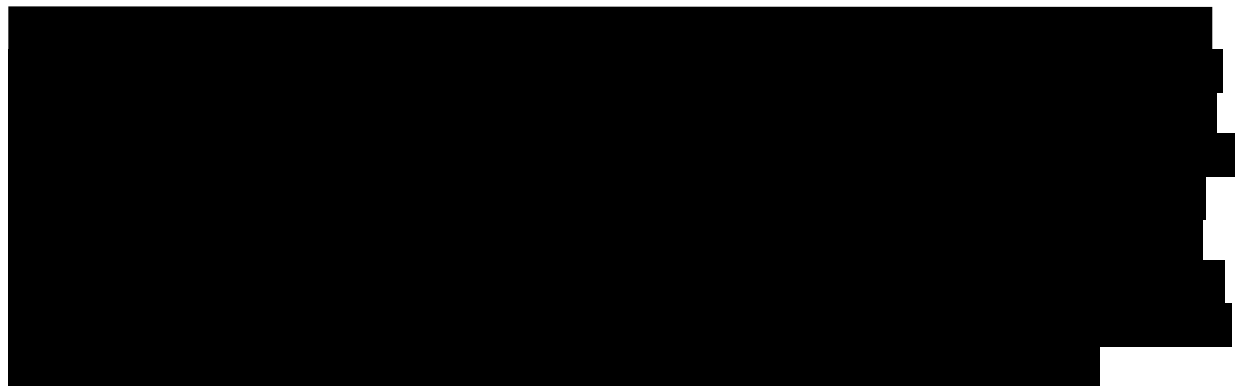


[Redacted text block]

[Redacted text block]

(b) (5)



(b) (5)



## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:38 AM

# Conversation Contents

## Twin Metals talking points and Q&A

### Attachments:

/15. Twin Metals talking points and Q&A/1.1 2017.12.13 Twin Metals - Talking points\_Q&A.docx  
/15. Twin Metals talking points and Q&A/2.1 2017.12.13 Twin Metals - Talking points\_Q&A rhm.docx  
/15. Twin Metals talking points and Q&A/3.1 2017.12.14 Twin Metals - Talking points\_Q&A rhm.docx  
/15. Twin Metals talking points and Q&A/4.1 2017.12.15 Twin Metals - Talking points\_Q&A rhm.docx

---

## "Collier, Briana" <briana.collier@sol.doi.gov>

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Dec 13 2017 16:52:16 GMT-0700 (MST)  
**To:** Richard McNeer <richard.mcneer@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Twin Metals talking points and Q&A  
**Attachments:** 2017.12.13 Twin Metals - Talking points\_Q&A.docx

Richard, Karen: Here is a first draft of talking points and Q&A for the new Twin Metals opinion. Please let me know if there are topics I missed for which you would like me to draft additional items. Thanks very much.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

This email (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this email to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies.

---

## "McNeer, Richard" <richard.mcneer@sol.doi.gov>

**From:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**Sent:** Thu Dec 14 2017 09:25:08 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>

**Subject:** Re: Twin Metals talking points and Q&A  
**Attachments:** 2017.12.13 Twin Metals - Talking points\_Q&A rhm.docx

Briana:

I have some minor edits.

As for addition questions, I think maybe it should include (b) (5)

Richard

On Wed, Dec 13, 2017 at 6:52 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Richard, Karen: Here is a first draft of talking points and Q&A for the new Twin Metals opinion. Please let me know if there are topics I missed for which you would like me to draft additional items. Thanks very much.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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Phone: (202) 208-4853

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**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

---

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Thu Dec 14 2017 11:14:00 GMT-0700 (MST)  
**To:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**CC:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Twin Metals talking points and Q&A  
**Attachments:** 2017.12.14 Twin Metals - Talking points\_Q&A rhm.docx

Here it is with a few changes according to Richard's edits.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

This email (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this email to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies.



On Thu, Dec 14, 2017 at 9:25 AM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Briana:

I have some minor edits.

As for addition questions, I think maybe it should include "(b) (5)"

Richard

On Wed, Dec 13, 2017 at 6:52 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Richard, Karen: Here is a first draft of talking points and Q&A for the new Twin Metals opinion. Please let me know if there are topics I missed for which you would like me to draft additional items. Thanks very much.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
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505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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---

## "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Fri Dec 15 2017 13:36:19 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**CC:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Twin Metals talking points and Q&A  
**Attachments:** 2017.12.15 Twin Metals - Talking points\_Q&A rhm.docx

Here are my redline edits. I'll send a clean version of this to Jack now. Thank you. --Karen

On Thu, Dec 14, 2017 at 1:14 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Here it is with a few changes according to Richard's edits.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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intended recipient or the employee or agent responsible for delivery of this email to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies.

On Thu, Dec 14, 2017 at 9:25 AM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:  
Briana:

I have some minor edits.

As for addition questions, I think maybe it should include (b) (5)  
?"

Richard

On Wed, Dec 13, 2017 at 6:52 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Richard, Karen: Here is a first draft of talking points and Q&A for the new Twin Metals opinion. Please let me know if there are topics I missed for which you would like me to draft additional items. Thanks very much.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
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Albuquerque, NM 87102

Phone: (202) 208-4853

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DRAFT

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

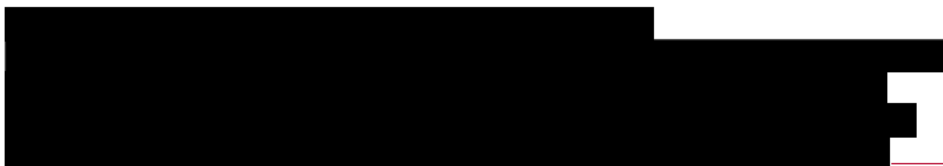
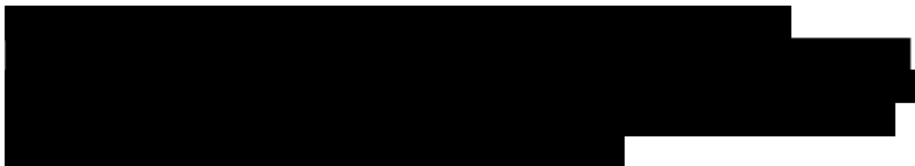
**Q & A**

**Q: Is this M-Opinion a leasing decision?**


(b) (5) [REDACTED]

DRAFT

(b) (5)



Commented [CBW1]: (b) (5)



DRAFT

(b) (5) [Redacted text block]

[Redacted text block]

[Redacted text block]

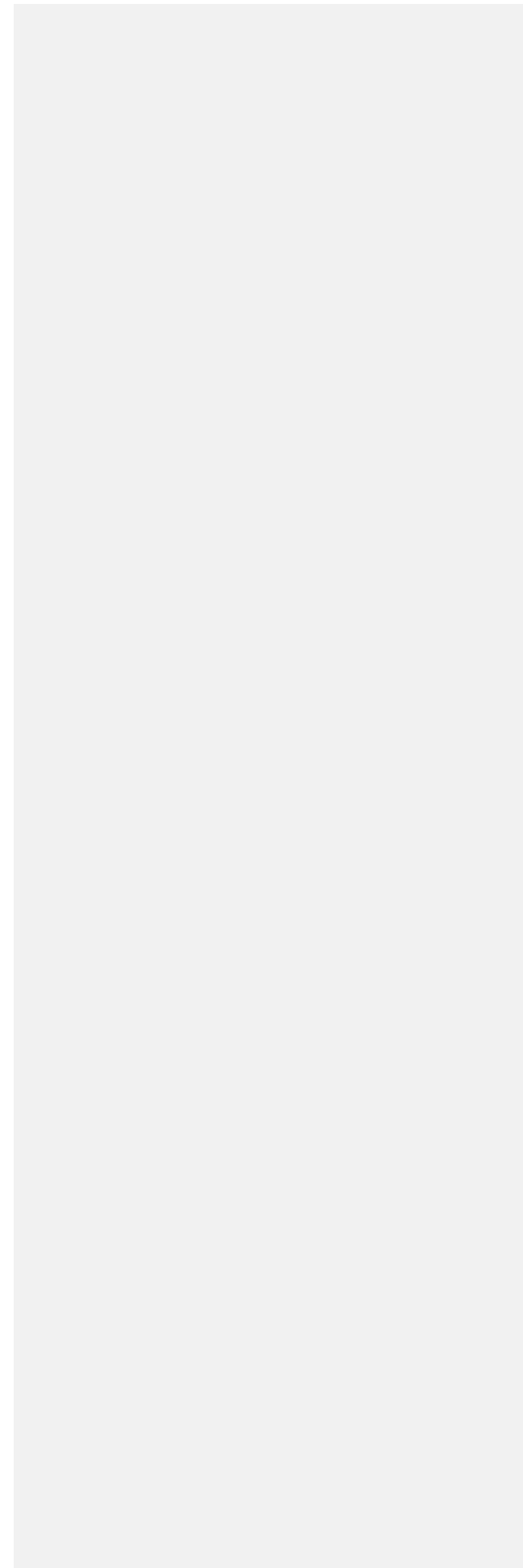
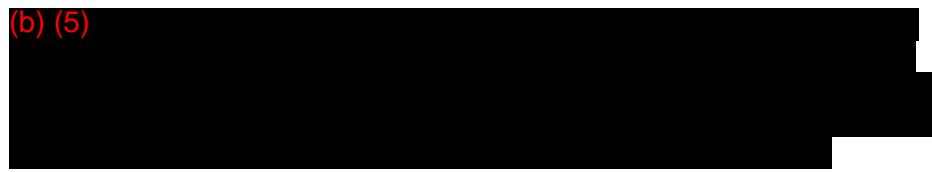
[Redacted text block]

[Redacted text block]

[Redacted text block]

DRAFT

(b) (5)



DRAFT

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

- (b) (5) [REDACTED]

DRAFT

(b) (5) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]



DRAFT

(b) (5) [Redacted]

Commented [CBW1] (b) (5) [Redacted]

[Redacted]

Commented [MR2]: (b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

DRAFT

(b) (5)



DRAFT

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals' Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

- (b) (5) [REDACTED]

DRAFT

(b) (5) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

DRAFT

(b) (5)

Commented [CBW1]:(b) (5)

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

Commented [MR2]:(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_

DRAFT

(b) (5)



Commented [CBW3]: (b) (5)



DRAFT

**New M-Opinion, M-\_\_\_\_, Reverses M-37036 Regarding Twin Metals’ Renewal Rights for Preference Right Leases Within the Superior National Forest, Minnesota**

**TALKING POINTS**

- (b) (5) [REDACTED]

**Q & A**

(b) (5) [REDACTED]

(b) (5) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]



(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:41 AM

# Conversation Contents

[Update] Ext. Mtg. w/ Twin Metals

**jkatusak@blm.gov**

---

**From:** jkatusak@blm.gov  
**Sent:** Fri Dec 15 2017 09:14:03 GMT-0700 (MST)  
**To:** briana.collier@sol.doi.gov, jkatusak@blm.gov,  
karen.hawbecker@sol.doi.gov  
**Subject:** [Update] Ext. Mtg. w/ Twin Metals

Hi Karen,

I just wanted to give you a heads-up regarding the below external meeting this after with Kathy Benedetto and Bob McFarlin from Twin Metals. The litigation is not expected to be the topic of conversation, but please let me know if you would would like someone from DMR to attend.

Thanks,  
Justin

## Ext. Mtg. w/ Twin Metals

Anne Williamson, Twin Metals VP of Environment and Sustainability  
Bob McFarlin, Government Affairs Advisor

On Wed, Dec 13, 2017 at 12:45 PM, Bob McFarlin wrote:  
Hi Kathy,

I hope this finds you well. Wondering if you would be available for a short visit this Friday (12/15). I am coming to DC for a quick meeting with USFS Chief Tooke and would love to touch base. I will be traveling with Twin Metals' VP of Environment and Sustainability, Anne Williamson, who you met in Minnesota this past summer. Might you be available after noon on Friday? Also wondering if Mitch Leverette might also be available. (I don't have his direct e-mail.) Thanks for your consideration.

Bob McFarlin  
Government Affairs Advisor  
Twin Metals Minnesota  
380 St. Peter St., Suite 705  
St. Paul, MN 55102

(b) (6) (c)

[www.Twin-Metals.com](http://www.Twin-Metals.com)

When Fri Dec 15, 2017 2pm – 2:30pm Eastern Time  
Where BLM-WO MIB RM5653 Conference Room ([map](#))  
Video call (b) (5)  
Who

- lthurn@blm.gov - organizer, optional
- mleveret@blm.gov
- aaron.moody@sol.doi.gov
- jkatusak@blm.gov
- kbenedetto@blm.gov

- [tspisak@blm.gov](mailto:tspisak@blm.gov)
- [rjefferson@blm.gov](mailto:rjefferson@blm.gov) - optional
- [bwinston@blm.gov](mailto:bwinston@blm.gov) - optional
- [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov) - optional
- [jbrune@blm.gov](mailto:jbrune@blm.gov) - optional

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:41 AM

# Conversation Contents

**Fwd: Draft BLM Letter to Forest Service**

**Attachments:**

/17. Fwd: Draft BLM Letter to Forest Service/1.1 2017.12.13 DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion.doc

/17. Fwd: Draft BLM Letter to Forest Service/2.1 Twin Metals 2017.12.13 DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion.doc

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 14 2017 13:25:04 GMT-0700 (MST)  
**To:** "Piropato, Marissa (ENRD)" <Marissa.Piropato@usdoj.gov>  
Briana Collier <briana.collier@sol.doi.gov>, "Boronow, Clare (ENRD)" <Clare.Boronow@usdoj.gov>, "Duffy, Sean C. (ENRD)" <Sean.C.Duffy@usdoj.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**CC:**  
**Subject:** Fwd: Draft BLM Letter to Forest Service  
**Attachments:** 2017.12.13 DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion.doc

Marissa, As we discussed, here's the draft Forest Service letter related to Twin Metals. Please let us know if you have any edits or comments. Thank you. --Karen

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 08:59:44 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Fwd: Draft BLM Letter to Forest Service  
**Attachments:** Twin Metals 2017.12.13 DRAFT Ltr from BLM ESO to FS Reg Forester re new M-Opinion.doc

FYI--as we expected.

----- Forwarded message -----

From: **Mulach, Ronald - OGC** <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>  
Date: Fri, Dec 15, 2017 at 8:30 AM  
Subject: RE: Draft BLM Letter to Forest Service  
To: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Cc: Jack Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>

Thanks for the opportunity to review. Just wondering about one sentence in the last paragraph. From our perspective, it might be better to leave it out.

**From:** Hawbecker, Karen [mailto:[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)]  
**Sent:** Wednesday, December 13, 2017 7:08 PM  
**To:** Mulach, Ronald - OGC <[RONALD.MULACH@OGC.USDA.GOV](mailto:RONALD.MULACH@OGC.USDA.GOV)>  
**Cc:** Jack Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Subject:** Draft BLM Letter to Forest Service

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**"Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>**

---

**From:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Sent:** Fri Dec 15 2017 08:59:56 GMT-0700 (MST)  
**To:** Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Fwd: Draft BLM Letter to Forest Service

FYI

----- Forwarded message -----

**From:** Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Date:** Fri, Dec 15, 2017 at 9:25 AM  
**Subject:** Re: Draft BLM Letter to Forest Service  
**To:** "Mulach, Ronald - OGC" <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>  
**Cc:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>

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# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.es.blm.gov>



DRAFT ATTORNEY-CLIENT PRIVILEGE—DO NOT RELEASE

Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)


[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b) (5)

A large rectangular area of the document is completely redacted with a solid black box. The redaction covers approximately the top third of the page content.

Sincerely,

Mitchell Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Eastern States  
20 M Street, SE Suite 950  
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626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

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(b) (5)



(b) (5)

Commented [MR-9](5)

Sincerely,

Mitchell Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest

# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:42 AM

## Conversation Contents

**Fwd: Invitation: Ext. Mtg. w/ Twin Metals @ Fri Dec 15, 2017 2pm - 2:30pm**  
(aaron.moody@sol.doi.gov)

**Attachments:**

/18. Fwd: Invitation: Ext. Mtg. w/ Twin Metals @ Fri Dec 15, 2017 2pm - 2:30pm  
(aaron.moody@sol.doi.gov)/1.1 invite.ics

**"Moody, Aaron" <aaron.moody@sol.doi.gov>**

---

**From:** "Moody, Aaron" <aaron.moody@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 08:00:15 GMT-0700 (MST)  
**To:** Ryan Sklar <ryan.sklar@sol.doi.gov>, Kevin Haugrud <jack.haugrud@sol.doi.gov>, "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, "Brown, Laura" <Laura.Brown@sol.doi.gov>  
**Subject:** Fwd: Invitation: Ext. Mtg. w/ Twin Metals @ Fri Dec 15, 2017 2pm - 2:30pm (aaron.moody@sol.doi.gov)  
**Attachments:** invite.ics

FYI. I talked to Justin and told him I thought DMR would be the more appropriate SOL rep (if we need one). Anyone feel free to chime in if they think Ryan or I should go too....

Aaron G. Moody  
Assistant Solicitor, Branch of Public Lands  
Division of Land Resources  
Office of the Solicitor  
U.S. Department of the Interior  
202-208-3495

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**Date:** Fri, Dec 15, 2017 at 9:38 AM  
**Subject:** Invitation: Ext. Mtg. w/ Twin Metals @ Fri Dec 15, 2017 2pm - 2:30pm  
(aaron.moody@sol.doi.gov)  
**To:** aaron.moody@sol.doi.gov, tspisak@blm.gov, jkatusak@blm.gov, mleveret@blm.gov, kbenedetto@blm.gov  
**Cc:** ymackthompson@blm.gov, jbrune@blm.gov, rjefferson@blm.gov, bwinston@blm.gov

Anne Williamson, Twin Metals VP of Environment and Sustainability  
Bob McFarlin, Government Affairs Advisor

On Wed, Dec 13, 2017 at 12:45 PM, Bob McFarlin wrote:  
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Bob McFarlin  
Government Affairs Advisor  
Twin Metals Minnesota  
380 St. Peter St., Suite 705  
St. Paul, MN 55102  
612-655-2099 (c)

[www.Twin-Metals.com](http://www.Twin-Metals.com)

When Fri Dec 15, 2017 2pm – 2:30pm Eastern Time  
Where BLM-WO MIB RM5653 Conference Room ([map](#))  
Video call (b) (5)  
Calendar [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)  
Who

- [lthurn@blm.gov](mailto:lthurn@blm.gov) - organizer, optional
- [tspisak@blm.gov](mailto:tspisak@blm.gov)
- [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)
- [jkatusak@blm.gov](mailto:jkatusak@blm.gov)
- [mleveret@blm.gov](mailto:mleveret@blm.gov)
- [kbenedetto@blm.gov](mailto:kbenedetto@blm.gov)
- [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov) - optional
- [jbrune@blm.gov](mailto:jbrune@blm.gov) - optional
- [rjefferson@blm.gov](mailto:rjefferson@blm.gov) - optional
- [bwinston@blm.gov](mailto:bwinston@blm.gov) - optional

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---

**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 08:22:36 GMT-0700 (MST)  
**To:** "Moody, Aaron" <aaron.moody@sol.doi.gov>  
Ryan Sklar <ryan.sklar@sol.doi.gov>, "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>, "Brown, Laura"  
**CC:**



<Laura.Brown@sol.doi.gov>

**Subject:**

Re: Invitation: Ext. Mtg. w/ Twin Metals @ Fri Dec 15, 2017 2pm - 2:30pm (aaron.moody@sol.doi.gov)

Thanks for the heads-up. DMR should take the lead. I don't think we need anyone to attend,

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To: [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov), [tspisak@blm.gov](mailto:tspisak@blm.gov), [jkatusak@blm.gov](mailto:jkatusak@blm.gov), [mleveret@blm.gov](mailto:mleveret@blm.gov),  
[kbenedetto@blm.gov](mailto:kbenedetto@blm.gov)

Cc: [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov), [jbrune@blm.gov](mailto:jbrune@blm.gov), [rjefferson@blm.gov](mailto:rjefferson@blm.gov), [bwinston@blm.gov](mailto:bwinston@blm.gov)

**Ext. Mtg. w/ Twin Metals**

[more details »](#)

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When Fri Dec 15, 2017 2pm – 2:30pm Eastern Time

Where BLM-WO MIB RM5653 Conference Room ([map](#))

Video call (b) (5)

Calendar [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)

- Who
- [lthurn@blm.gov](mailto:lthurn@blm.gov) - organizer, optional
  - [tspisak@blm.gov](mailto:tspisak@blm.gov)
  - [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)
  - [jkatusak@blm.gov](mailto:jkatusak@blm.gov)
  - [mleveret@blm.gov](mailto:mleveret@blm.gov)
  - [kbenedetto@blm.gov](mailto:kbenedetto@blm.gov)
  - [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov) - optional
  - [jbrune@blm.gov](mailto:jbrune@blm.gov) - optional
  - [rjefferson@blm.gov](mailto:rjefferson@blm.gov) - optional
  - [bwinston@blm.gov](mailto:bwinston@blm.gov) - optional

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Invitation from [Google Calendar](#)

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## "Collier, Briana" <briana.collier@sol.doi.gov>

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Fri Dec 15 2017 08:40:23 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Invitation: Ext. Mtg. w/ Twin Metals @ Fri Dec 15, 2017 2pm - 2:30pm (aaron.moody@sol.doi.gov)

Please let me know if/how I can help with this.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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([aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov))

To: [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov), [tspisak@blm.gov](mailto:tspisak@blm.gov), [jkatusak@blm.gov](mailto:jkatusak@blm.gov), [mleveret@blm.gov](mailto:mleveret@blm.gov),  
[kbenedetto@blm.gov](mailto:kbenedetto@blm.gov)

Cc: [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov), [jbrune@blm.gov](mailto:jbrune@blm.gov), [rjefferson@blm.gov](mailto:rjefferson@blm.gov), [bwinston@blm.gov](mailto:bwinston@blm.gov)

### Ext. Mtg. w/ Twin Metals

[more details »](#)

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Where BLM-WO MIB RM5653 Conference Room ([map](#))

Video call **(b) (5)** [n](#)

Calendar [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)

Who

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- [aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)
- [jkatusak@blm.gov](mailto:jkatusak@blm.gov)

- [mleveret@blm.gov](mailto:mleveret@blm.gov)
- [kbenedetto@blm.gov](mailto:kbenedetto@blm.gov)
- [ymackthompson@blm.gov](mailto:ymackthompson@blm.gov) - optional
- [jbrune@blm.gov](mailto:jbrune@blm.gov) - optional
- [rjefferson@blm.gov](mailto:rjefferson@blm.gov) - optional
- [bwinston@blm.gov](mailto:bwinston@blm.gov) - optional

Going? [Yes](#) - [Maybe](#) - [No](#) [more options »](#)

Invitation from [Google Calendar](#)

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# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:42 AM

# Conversation Contents

Fwd: Twin Metals

**"McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>**

---

**From:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Sent:** Wed Dec 13 2017 11:14:24 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Fwd: Twin Metals

----- Forwarded message -----

From: **Hawbecker, Karen** <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
Date: Wed, Dec 13, 2017 at 1:13 PM  
Subject: Re: Twin Metals  
To: "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

I think we did talking points and Q&As for the last M-Op that might be instructive, at least as to form.

On Wed, Dec 13, 2017 at 1:11 PM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

Karen:

I spoke with Briana. I gave her a heads up that the M-Op might be edited before it is signed, but that Jack will be negotiating those issues.

She will start to work on talking points and Q&As, but warned me that she lacks experience with that joy of government service.

Richard

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

---

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Wed Dec 13 2017 11:16:23 GMT-0700 (MST)  
**To:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Twin Metals

Yes, I have those and will use them as a launchpad. Thanks Richard.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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Karen:

I spoke with Briana. I gave her a heads up that the M-Op might be edited before it is signed, but that Jack will be negotiating those issues.

She will start to work on talking points and Q&As, but warned me that she lacks experience with that joy of government service.

Richard



# **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 1"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:112 (20 conversations)

Created: 08-07-2018 at 10:42 AM

# Conversation Contents

**Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op**

**Attachments:**

/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/1.1  
2017.12.11 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_.doc  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/1.2  
Letter to Regional Forester Re Leases in Superior National Forest June 3 2016.pdf  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/2.1  
2017.12.11 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_ rhm.doc  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/3.1  
2017.12.12 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_ clean.doc  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/3.2  
2017.12.12 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_ redlined.doc  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/3.3  
USFS Twin Metals nonconsent determination.pdf  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/4.1  
2017.12.12 pm Ltr from BLM ESO to FS Reg Forester re new M-Opinion redline.doc  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/5.1  
USFS Twin Metals nonconsent determination.pdf  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/5.2  
2017.12.12 pm Ltr from BLM ESO to FS Reg Forester re new M-Opinion clean.doc  
/20. Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op/7.1  
2017.12.12 pm Ltr from BLM ESO to FS Reg Forester re new M-Opinion kjh.doc

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Mon Dec 11 2017 14:05:53 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op  
2017.12.11 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_.doc  
**Attachments:** Letter to Regional Forester Re Leases in Superior National Forest June 3 2016.pdf

Hi Karen, Richard:

Here is a first draft to kick off discussion as to what content we want to include in the letter from BLM ESO to the FS informing them of the new M-Opinion. In this draft, I suggest (b) (5)

[REDACTED]

[REDACTED]

Please let me know what you think. I am happy to reshape the draft as you think might be best.

Thank you,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste. 1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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**"McNeer, Richard" <richard.mcneer@sol.doi.gov>**

---

**From:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**Sent:** Mon Dec 11 2017 14:57:08 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op  
**Attachments:** 2017.12.11 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_rh.m.doc

Briana:

Here are a few suggestions.

Richard

On Mon, Dec 11, 2017 at 4:05 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Hi Karen, Richard:

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**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Tue Dec 12 2017 14:04:46 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**CC:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op  
**Attachments:** 2017.12.12 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_ clean.doc 2017.12.12 Ltr from BLM ESO to FS Reg Forester re M-\_\_\_\_ redlined.doc USFS Twin Metals nonconsent determination.pdf

Hi Karen,

Here is a revised version of the letter from BLM ESO to the Forest Service, with some additional language included. I have attached a clean and redlined version because the redline is a bit difficult to read. Please let me know if you think this language hits the target we are aiming for.

(b) (5)



(b) (5)

Thanks very much,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste. 1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Mon, Dec 11, 2017 at 2:57 PM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:  
Briana:

Here are a few suggestions.

Richard

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Thank you,  
Briana

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**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Tue Dec 12 2017 18:55:53 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op  
**Attachments:** 2017.12.12 pm Ltr from BLM ESO to FS Reg Forester re new M-Opinion redline.doc

Briana and Richard, I've noted my edits in redline in the attachment. I'm going to accept these changes now and send a clean draft to Jack for his review. Thank you for your work on this. --Karen

On Tue, Dec 12, 2017 at 4:04 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Hi Karen,

Here is a revised version of the letter from BLM ESO to the Forest Service, with some additional language included. I have attached a clean and redlined version because the redline is a bit difficult to read. Please let me know if you think this language hits the target we are aiming for.

(b) (5)





(b) (5)

Thanks very much,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
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On Mon, Dec 11, 2017 at 2:57 PM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:  
Briana:

Here are a few suggestions.

Richard

On Mon, Dec 11, 2017 at 4:05 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Hi Karen, Richard:

Here is a first draft to kick off discussion as to what content we want to include in the letter from BLM ESO to the FS informing them of the new M-Opinion. In this draft, I suggest (b) (5)

Please let me know what you think. I am happy to reshape the draft as you think might be best.

Thank you,  
Briana

Briana Collier  
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**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Tue Dec 12 2017 19:07:47 GMT-0700 (MST)  
**To:** Jack Haugrud <jack.haugrud@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**Subject:** Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op  
**Attachments:** USFS Twin Metals nonconsent determination.pdf 2017.12.12 pm  
Ltr from BLM ESO to FS Reg Forester re new M-Opinion clean.doc

Jack, Here is a draft letter from BLM to the Forest Service that would notify the Forest Service about the new M-Opinion and advise it that BLM will no longer consider the Forest Service's December 2016 non-consent determination to be a valid determination. Let us know what you think of the approach we propose to take.

Briana notes (b) (5)



Let us know if you'd like us to make further changes to the draft letter. Thanks. --Karen



**Kevin Haugrud** <jack.haugrud@sol.doi.gov>

---

**From:** Kevin Haugrud <jack.haugrud@sol.doi.gov>  
**Sent:** Wed Dec 13 2017 03:50:06 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op

Thanks everyone. I'll look at it this morning and provide any comments. I spoke with Dan last night, and he is tentatively setting this Friday as the date for issuing the m-opinion. He also said that he would have some edits. We also discussed rollout briefly, and while he is not envisioning a press release, he would like talking points and Q's and A's. Let's shoot for having a draft of those to me by Thursday morning.


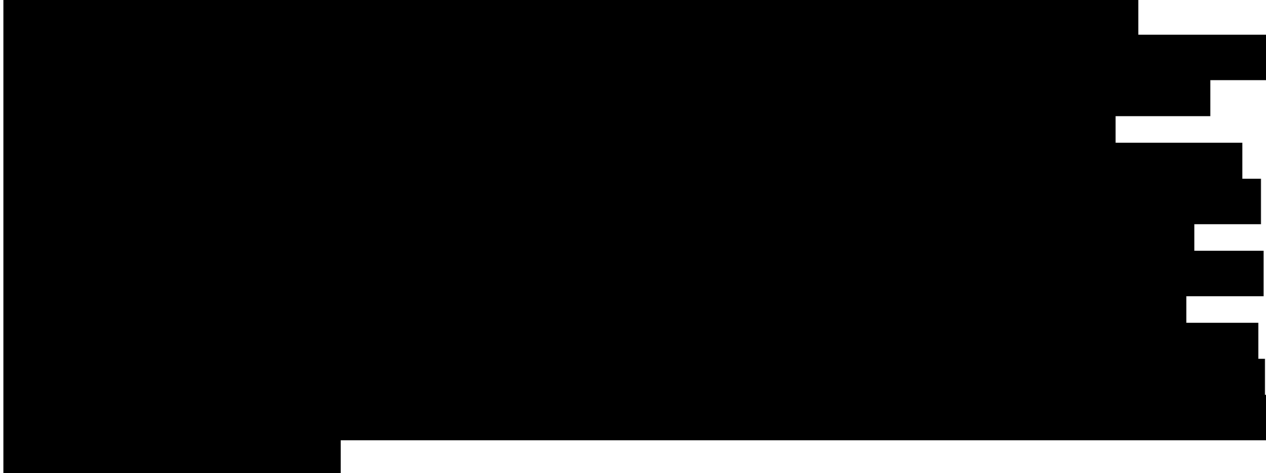


---

**From:** Hawbecker, Karen  
**Sent:** Tuesday, December 12, 2017 9:08 PM  
**To:** Jack Haugrud  
**Cc:** Briana Collier; Richard McNeer  
**Subject:** Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op

---

Jack, Here is a draft letter from BLM to the Forest Service that would notify the Forest Service about the new M-Opinion and advise it that BLM will no longer consider the Forest Service's December 2016 non-consent determination to be a valid determination. Let us know what you think of the approach we propose to take.

Briana notes (b) (5)



Let us know if you'd like us to make further changes to the draft letter. Thanks. --Karen

**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---





**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Wed Dec 13 2017 07:47:27 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <Richard.McNeer@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op  
**Attachments:** 2017.12.12 pm Ltr from BLM ESO to FS Reg Forester re new M-Opinion kjh.doc

Thanks. Attached are my comments and suggestions (all but one stylistic in nature). If you're okay with it, please send a clean copy to Ron Mulach for his review.

On Tue, Dec 12, 2017 at 9:07 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

Jack, Here is a draft letter from BLM to the Forest Service that would notify the Forest Service about the new M-Opinion and advise it that BLM will no longer consider the Forest Service's December 2016 non-consent determination to be a valid determination. Let us know what you think of the approach we propose to take.

Briana notes (b) (5)



Let us know if you'd like us to make further changes to the draft letter. Thanks. --Karen

**"McNeer, Richard" <richard.mcneer@sol.doi.gov>**

---

**From:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**Sent:** Wed Dec 13 2017 08:17:47 GMT-0700 (MST)

**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op

Briana and Karen:

I have no edits.

Richard

On Wed, Dec 13, 2017 at 9:47 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
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Briana notes (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Let us know if you'd like us to make further changes to the draft letter. Thanks. --Karen

---

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>

**Sent:** Wed Dec 13 2017 09:55:02 GMT-0700 (MST)  
**To:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**CC:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op

I do not have any edits either. I think Jack is right that (b) (5), but I like his proposed solution.

Please let me know if you would like me to send the clean copy to Ron. Thank you.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste. 1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Wed, Dec 13, 2017 at 8:17 AM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:  
Briana and Karen:

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Briana notes (b) (5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

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---

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**From:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Sent:** Wed Dec 13 2017 09:58:46 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**CC:** "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Draft letter from BLM ESO to FS Regional Forester re: new Twin Metals M-Op

Briana:

Karen will send it.

Thanks.

Richard

On Wed, Dec 13, 2017 at 11:55 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

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Briana Collier  
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[505 Marquette Ave., NW Ste.1800](#)  
[Albuquerque, NM 87102](#)

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Briana notes (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Let us know if you'd like us to make further changes to the draft letter. Thanks. --Karen



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

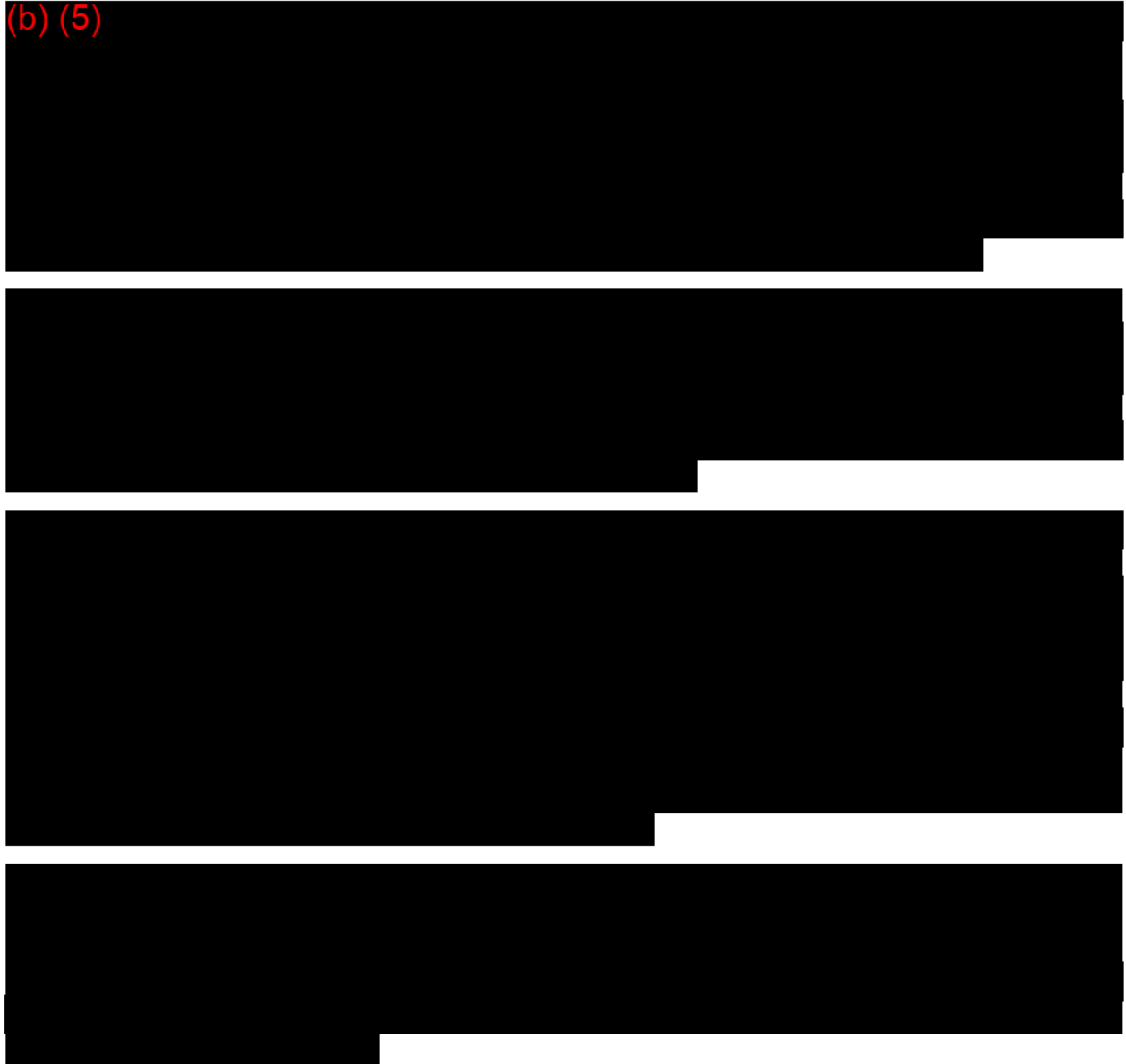
Washington, DC 20003

<http://www.es.blm.gov>


Ms. Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)



(b) (5)



Sincerely,

Mitchell \_ Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest





# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Eastern States  
20 M Street, SE Suite 950  
Washington, DC 20003  
<http://www.es.blm.gov>

**JUN 03 2016**

Ms. Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

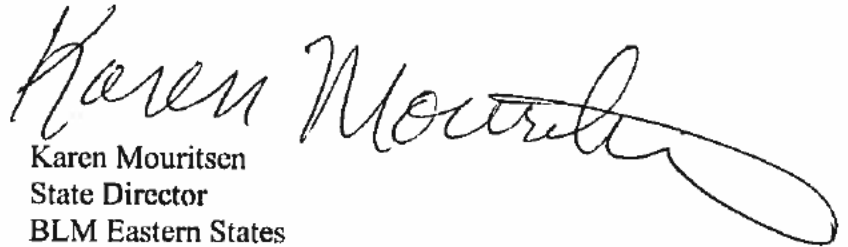
As you know, the Bureau of Land Management (BLM) has been considering an application by Twin Metals Minnesota (TMM) to renew its two existing mining leases (MNES 1352 and MNES 1353). The USDA Forest Service is the surface management agency for the lands where these two leases are located, and the BLM has jurisdiction over the mineral rights. The BLM has previously issued two renewals of the leases, with USDA Forest Service consent, in 1989 and 2004. The leases allow for the mining of copper, nickel, and associated minerals; but to date, the lessee has not begun mineral production on either of the leases.

In processing the pending application, the BLM identified the need for a legal opinion to determine whether TMM has a non-discretionary right to renew the two leases. The Department of the Interior's Office of the Solicitor examined the issue and determined that TMM does not have a right to the automatic renewal of the leases; rather, the government has discretion to decide whether to grant or deny the application for renewal. This determination was formalized in a Memorandum Opinion issued by the Solicitor of the United States Department of the Interior on March 8, 2016 (M-37036), a copy of which I have attached for your information.

In light of the legal determination that the government has discretion in granting or denying the TMM lease renewal application, in accordance with 43 CFR 3503.20, 16 U.S.C. 508b, Section 402 of Reorganization Plan Number 3 of 1946, 60 Stat. 1097, 1099, and 16 U.S.C 520, the BLM requests that the USDA Forest Service provide, in writing, a decision on whether it consents or does not consent to renewal of the leases. As you know, this information from the surface management agency is necessary before the BLM takes additional action on the application.

We appreciate your continued partnership in this process and in managing the public lands in Northern Minnesota. If you need additional information, please contact me at (202) 912-7701.

Sincerely,

  
Karen Mouritsen  
State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



# United States Department of the Interior

## OFFICE OF THE SOLICITOR

1849 C STREET N.W.  
WASHINGTON, DC 20240

M-37036

MAR - 8 2016

### Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)

The Bureau of Land Management (BLM) has asked whether it has the discretion to grant or deny Twin Metals Minnesota's pending application for renewal of two hardrock preference right leases in northern Minnesota.<sup>1</sup> I conclude that Twin Metals Minnesota does not have a non-discretionary right to renewal, but rather the BLM has discretion to grant or deny the pending renewal application.

### Background

On October 21, 2012, Twin Metals Minnesota (TMM) submitted an application to renew two preference right leases (MNES-01352 and MNES-01353) for lands that are located near the southern boundary of the Boundary Waters Canoe Area Wilderness in northern Minnesota.<sup>2</sup>

The two leases at issue are located on acquired Weeks Act lands, as well as National Forest System lands reserved from the public domain and managed by the United States Forest Service. The Secretary's authority, delegated to the BLM, for mineral disposition on the acquired lands is in section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, and 16 U.S.C. § 520, which governs mineral disposition on Weeks Act lands. The Secretary's authority, delegated to the BLM, for mineral disposition on reserved National Forest System lands in Minnesota is in 16 U.S.C. § 508b.

The BLM originally awarded the leases on June 1, 1966, for a primary term of twenty years, with the possibility of three ten-year renewals.<sup>3</sup> On May 14, 1986, the lessee timely applied for a renewal.<sup>4</sup> After receiving legal advice from the Office of the Solicitor that the lease terms allowed for a renewal, the BLM granted a renewal of the leases on July 1, 1989, for a period of

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<sup>1</sup> This memorandum does not address issues related to National Environmental Policy Act compliance or any other legal issues surrounding these leases.

<sup>2</sup> The Chippewa in Minnesota have hunting, fishing, and other usufructuary rights in the northeast portion of the state of Minnesota under the 1854 Treaty of LaPointe. Treaty with the Chippewa, 10 Stat. 1109 (1854).

<sup>3</sup> See 1966 leases §§ 1(a), 5.

<sup>4</sup> The regulations at 43 C.F.R. § 3522.1-1 (1985) state that renewal applications "must be filed in the appropriate land office within 90 days prior to the expiration of the lease term." The lessee filed an application for extension of the term of the leases on May 14, 1986—30 days before the end of the primary twenty-year term on June 14, 1986, which was "within 90 days" of the lease expiration. Consequently, the renewal application was timely filed.

ten years.<sup>5</sup> TMM timely applied for a second renewal on March 15, 1999. The BLM renewed the leases on January 1, 2004.<sup>6</sup> The 2004 leases state that they are for a period of ten years, "with preferential right in the lessee to renew for successive periods of 10 years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period." On October 21, 2012, TMM timely applied to renew the leases once more.<sup>7</sup> TMM has been conducting exploration activities on the leaseholds based on the 2004 leases while the BLM considers TMM's 2012 renewal application.

Under the original 1966 lease terms, as discussed more fully below, the lessee was required to commence production within the twenty-year primary term to qualify for three renewals of right. The leases provided that if there was no production at the end of the primary term, the leases would end unless the Secretary granted a lease renewal to extend the time to commence production.<sup>8</sup>

Although there has been no production, the operator held the leases under production waivers for five years and then through payment of minimum royalties in lieu of production payments for the rest of the time, consistent with the provisions of the 1966 leases that were incorporated by reference in the 2004 leases. Those provisions stated that, beginning after the tenth year of the primary term, the lessee is required to mine a quantity of minerals such that the royalties would be equal to \$5 per annum per acre for the primary term and \$10 per annum per acre during each renewal or, in lieu of that production, pay royalties equal to the minimum royalty. *See* 1966 leases § 2(c) (incorporated into section 14 of the 2004 leases). Section 2(c) of the 1966 leases allowed the lessor to waive, reduce, or suspend the minimum royalty payment for reasonable periods of time in the interest of conservation or when such action does not adversely affect the interest of the United States in accordance with 43 C.F.R. § 3222.6-2. *Id.*

According to the BLM's records, the BLM relied on section 2(c) of the 1966 leases to grant individual waivers of production and minimum royalties for each of the first five lease years after the tenth year of the leases, beginning on June 1, 1976, and ending May 31, 1981, while the State of Minnesota was conducting environmental studies on the proposed mining operations,

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<sup>5</sup> The three-year time period between the date on which the lessee filed for the first ten-year lease renewal and the date on which the lease renewal was approved appears to have been due to BLM's consideration of the lessee's minimum royalty waiver request, coordination efforts between the United State Forest Service and the BLM regarding the Forest Service approval for the renewals, and the BLM's consideration regarding the terms of the lease renewal.

<sup>6</sup> The lessee's application for a second renewal on March 15, 1999 was 109 days before the end of the first lease renewal on July 1, 1999. The regulations in force in 1999 state that "[a]n application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term." 43 C.F.R. § 3528.1 (1998). Consequently, the 1999 renewal application was timely filed. The time period between the lessee's filing of the second renewal application in March 1999 and the BLM's approval of the lease renewal in January 2004 appears to have been due to coordination efforts between the United States Forest Service and the BLM, as well as the BLM's internal review process.

<sup>7</sup> The 2012 renewal application was submitted 438 days before the end of the second renewal on January 1, 2014. The timing requirements for filing a renewal application in the current regulations are the same as those in the regulations that were in force in 1999. *Id.* § 3511.27 (2015). Consequently, the 2012 application was timely filed.

<sup>8</sup> Section 5 of the 1966 leases contains definite conditions for allowing such an extension, i.e., in the interest of conservation or upon a satisfactory showing by the lessee that the lease cannot be successfully operated at a profit or for other reasons.

which prevented INCO Alloys International, Inc. (TMM's predecessor in interest at the time of BLM's waiver decision), from developing the leases.<sup>9</sup>

The BLM records show that INCO filed another production and minimum royalty waiver request on June 26, 1985, for the period of July 1, 1981, to June 30, 1986. In response, the BLM issued a decision on January 28, 1987, finding that Minnesota had completed its environmental studies in 1979 and that INCO had not filed any mining applications or royalty waiver applications since 1981. The decision stated that "there is no evidence that INCO International is diligently working towards the development of these leases." Based on the BLM's conclusion that INCO had not met the obligations of the leases, the agency denied the production and royalty waiver request. The decision also notified the lessee that all delinquent payments were due before the BLM could process the first lease renewals at that time.<sup>10</sup> Although the BLM's records show that INCO failed to timely pay the annual rentals and minimum royalties in lieu of production for the lease years from June 1, 1981, to May 31, 1985 (a four-year period), once INCO received notice from the BLM about the delinquency, INCO paid the fees for all four years. Consequently, the royalty payment records of the Office of Natural Resources Revenue (ONRR) show that TMM and its predecessors paid the minimum royalties in lieu of production for each of the delinquent years—1981 to 1985. The ONRR records also show that TMM paid the minimum royalty in lieu of production payments from 1986 to the present.

In preparing to respond to the 1985 royalty waiver request, the BLM sought legal advice from the Solicitor's Office, which led to a 1986 legal memorandum regarding the use of one of the three renewals identified in section 5 of the 1966 leases to extend the time to commence production. This 1986 Associate Solicitor's Opinion is discussed below in this memorandum.<sup>11</sup>

As to the rental payments, the regulations in effect before 1986 provided that the "rental paid for any year shall be credited against any royalties for that year." 43 C.F.R. § 3503.3-1(b)(5) (1985). Beginning in 1999, the regulations have provided that the Minerals Management Service (now ONRR) "will credit your lease rental for any year against the first production royalties or minimum royalties . . . as the royalties accrue under the lease during that year." *Id.* § 3504.16(e) (2014). The ONRR records show that TMM has paid the rentals and those payments have been recouped for payment of a portion of the minimum royalty payments.

#### Relevant Lease Provisions

Three provisions in the 2004 leases are pertinent to whether TMM has a non-discretionary right to renewal:

##### Part I. Lease Rights Granted:

This Lease Renewal entered into by and between the United States of America, through the Bureau of Land Management, hereinafter called lessor, and American Copper &

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<sup>9</sup> These annual waivers, beginning in June 1976 and ending in May 1981, served to waive the production and minimum royalty requirements of the leases for that time period. The notification letters that BLM sent to the lessee for each of these waivers state that a waiver of production and minimum royalty requirements is granted and do not state that the lease term is being extended for the period of the suspension.

<sup>10</sup> As noted above, the lessee applied for its first lease renewal in May 1986. Under the 1966 lease terms, the twenty-year primary term was due to expire in June 1986.

<sup>11</sup> See *infra* p. 12.

Nickel Company, 922 19<sup>th</sup> Street, Golden, Colorado, 80401, hereinafter called lessee, is effective Jan-1 2004, for a period of 10 years, *Sodium, Sulphur, Hardrock* – with preferential right in the lessee to renew for successive periods of 10 years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period.

**Part I, Section 2:**

Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to explore for, drill for, mine, extract, remove, benefitiate, concentrate, or otherwise process and dispose of the copper deposits nickel & associated minerals hereinafter referred to as “leased deposits,” in, upon, or under the following described lands: . . . .

**Part II, Section 14. Special Stipulations:**

\* The terms and conditions of the production royalties remains as stated in the attached original lease agreement [referring to the 1966 lease].

\*\* The minimum annual production and minimum royalty is \$10.00 per acre or a fraction thereof as stated in the attached original lease agreement [referring to the 1966 lease].

Because the provisions of the 2004 leases govern for the reasons set forth below, the renewal provisions of the 1966 leases are not applicable. Nevertheless, to provide a comprehensive analysis, the renewal provisions of the 1966 leases are discussed in the analysis that follows.

The three relevant provisions in the 1966 leases are:

**Introductory clause:**

This lease entered into . . . between the United States of America, as Lessor, through the Bureau of Land Management, and [TMM’s predecessor], as Lessee, pursuant to the authority set out in, and subject to, Section 402 of the President’s Reorganization Plan No. 3 of 1946, 60 Stat. 1099, and the Act of June 30, 1950, 64 Stat. 311, and to all regulations of the Secretary of the Interior now in force when not inconsistent with any of the provisions herein.

**Section I(a):**

Rights of Lessee. In consideration of the rents and royalties to be paid and conditions and covenants to be observed as herein set forth the Lessor grants to the Lessee, subject to all privileges and uses heretofore duly authorized and prior valid claims, the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals . . . in, upon, or under [the described lands] . . . together with the right to construct and maintain thereon such structures and other facilities as may be necessary or convenient for the mining, preparation, and removal of said minerals, for a period of twenty (20) years with a right in the Lessee to renew the same for successive

periods of ten (10) years each in accordance with regulation 43 C.F.R. § 3221.4(f) and the provisions of this lease.

#### Section 5:

**Renewal Terms.** The Lessor shall have the right to reasonably readjust and fix royalties payable hereunder at the end of the primary term of this lease and thereafter at the end of each successive renewal thereof unless otherwise provided by the law at the time of the expiration of any such period, and to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover; provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in the royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of this lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day. The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the Lessee that the lease cannot be successfully operated at a profit or for other reasons, and the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable hereunder if at the end of the primary or renewal period such an extension shall be in effect, but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time. If the Lessee shall be entitled to renewal without readjustment except of royalties payable hereunder, the Secretary of the Interior may in his discretion increase the royalty rate prescribed in subsection (b) of Section 2 up to, but not exceeding (i) 5% during the first ten-year renewal period, (ii) 6% during the second ten-year renewal period, and (iii) 7% during the third ten-year renewal period. The extent of readjustment of royalty, if any to be made under this section shall be determined prior to the commencement of the renewal period.

#### Analysis

The renewal rights of TMM are governed by the applicable provisions of leases MNES 01352 and MNES 01353. At this time, the 2004 renewal leases are in effect, and they use the BLM's standard renewal language that has been in place since the 1980s. In particular, the 2004 lease renewal terms grant the "preferential right in the lessee to renew for successive periods of ten years under such terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any period." The Department has consistently interpreted this provision as not entitling the lessee to an automatic right of renewal: "This *preferential* right of renewal does not *entitle* the lessee to renewal of the lease but 'gives the renewal lease applicant the legal right to be preferred against other parties, should the Secretary, in the exercise of his discretion, decide to continue leasing.'" *Gen. Chem. (Soda Ash) Partners*, 176 IBLA 1, 3 (2008) (emphasis in original) (quoting *Sodium Lease Renewals*, M-36943, 89 Interior Dec. 173, 178 (1982) (1982 Solicitor's Opinion)). The Interior Board of Land Appeals (IBLA) noted further that the "Secretary may exercise his discretionary authority in renewing a lease in the same manner as in issuing an initial lease." *Id.*

In reaching this conclusion, I have carefully considered TMM's contention that the terms of the 1966 leases govern and require the BLM to renew the leases for a third ten-year term. As discussed below, I have concluded that the terms of the 2004 leases govern and that, in any event, the renewal provisions of the 1966 leases give the BLM discretion regarding whether to renew the leases.

The 2004 leases are each complete, integrated documents that contain all necessary lease terms and are duly signed by the lessee and lessor. The degree to which the original 1966 leases continue in effect are specifically described in the 2004 leases, with two special stipulations that incorporate by reference only two provisions from the 1966 leases. 2004 leases § 14. The first stipulation states that the "terms and conditions of the production royalties remains as stated in the attached original lease agreement." The second states that the "minimum annual production and minimum royalty is \$10.00 per acre or fraction thereof as stated in the attached original lease agreement." Neither of these imported provisions includes the lease renewal provisions of the 1966 leases. Consequently, since at least the time that the BLM and the lessee signed the 2004 lease renewals, the renewal provisions of the 1966 leases have no longer applied and the only renewal terms are those described in the 2004 leases, as quoted in the previous paragraph. Based on that well understood and unambiguous renewal language, the BLM has the same discretionary authority in considering whether to renew the 2004 leases as it had in issuing the initial 1966 leases.

In a recent memorandum to me from TMM's legal counsel,<sup>12</sup> TMM asks the BLM to ignore the plain renewal terms of the 2004 leases and instead apply the renewal provisions of the 1966 leases. TMM relies on extrinsic evidence, placing heavy reliance on the circumstances leading up to the earlier 1989 renewal, which TMM asserts provide evidence that the BLM intended to simply renew the leases under the exact same terms of the 1966 leases. TMM further asserts that the 2004 renewal, because it was executed using the same forms, must also have intended to renew the 1966 leases without any change in terms.

As explained below in the discussion of the 1966 lease terms, the 1989 and 2004 renewals differ from each other because the BLM's discretion was limited in 1989 but not in 2004. In particular, the 1989 renewal served as a one-time extension of time for commencement of production, as authorized under section 5 of the 1966 leases. But section 5 also states that if an extension is granted, the renewal must be on unaltered terms (other than royalty). Accordingly, under section 5 of the 1966 leases, the 1989 renewal was effectively a ten-year extension of the 1966 lease terms, and the use of standard renewal forms in 1989 could have no effect other than to extend the leases for ten years to allow for commencement of production. But because no production commenced during that extension, TMM was not entitled to any subsequent production extensions or renewals under the 1966 lease terms, so the BLM had discretion in 2004 over both whether to renew and the terms of any such renewal. The executed renewal in 2004 therefore has operative effect, and the plain language of the 2004 leases actually executed by the parties must be given effect. There is nothing in the duly executed 2004 leases that states that the 1966 terms somehow govern over the terms expressly set out in the 2004 leases.

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<sup>12</sup> Memorandum from I. Daniel Colton, Partner, Dorsey & Whitney LLP, received under a cover letter dated January 26, 2016, to me from Kevin L. Baker, Director, Legal Affairs, Twin Metals Minnesota, LLC.



TMM's reliance on extrinsic evidence to attempt to negate the 2004 lease terms does not comply with the law of contracts. In the absence of ambiguity in the relevant lease provision, it is improper to rely on extrinsic evidence. See *Coast Fed. Bank, FSB v. United States*, 323 F.3d 1035, 1040 (Fed. Cir. 2006) (en banc) ("If the provisions are clear and unambiguous, they must be given their plain and ordinary meaning, and we may not resort to extrinsic evidence to interpret them." (internal quotation marks and citation omitted)); see also *Shell Oil Co. v. United States*, 751 F.3d 1282, 1295 (Fed. Cir. 2014) (improper for government to rely on extrinsic evidence when contract provision is unambiguous); *Thoman v. Bureau of Land Mgmt. (on recon.)*, 155 IBLA 266, 267 (2001) ("If the contract language is clear and unambiguous, the terms of the agreement are given plain meaning and the intent of the parties and the interpretation of the agreement will be determined from the four corners of the document alone." (internal citations omitted)). Under this objective law of contracts, the subjective intent of the parties is not relevant unless there is fraud, duress, or mutual mistake, none of which is alleged by TMM. See *Armenian Assembly of Am., Inc. v. Cafesjian*, 758 F.3d 265, 278 (D.C. Cir. 2014) ("[T]he 'objective' law of contracts . . . generally means that 'the written language embodying the terms of an agreement will govern the rights and liabilities of the parties, [regardless] of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite undertaking, or unless there is fraud, duress, or mutual mistake.'" (alteration in original) (citations omitted))).

In this case, there is nothing ambiguous with the renewal provision contained in the 2004 leases: there is no conflicting renewal provision referenced elsewhere in the 2004 leases and the provision has a longstanding and well established meaning. While TMM has asserted that the "preferential right" to renew is ambiguous because it is susceptible of more than one meaning, that argument is without merit.<sup>13</sup> TMM misinterprets the 1982 Solicitor's Opinion, which held that the preference right to renew "gives the renewal lease applicant the legal right to be preferred against other parties should the Secretary, in the proper exercise of his discretion, decide to continue leasing." 1982 Solicitor's Opinion, 89 Interior Dec. at 178. In reaching this conclusion, the Solicitor included a discussion of the meaning of "preference right leases." That discussion focused on the rights gained in the *initial* leasing decision, and distinguished between "entitlement" leases, which are leases to which an applicant is by statute entitled to receive if it meets statutory criteria, and true "preference right leases," which are issued only if the Secretary decides to lease. See *id.* Based on this discussion, TMM asserts it is ambiguous whether its leases are entitlement leases or preference right leases. Even if this distinction altered renewal rights, which is an issue that does not need to be addressed for purposes of this memorandum, there is no ambiguity in this case. Neither of the statutory authorities under which the leases are issued—section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, and 16 U.S.C. § 508b—creates an entitlement to a lease or otherwise mandates the issuance of leases. To the contrary, both authorities expressly condition leasing on surface owner consent (in this instance the discretion of the Forest Service) and thus are discretionary. In short, there is no ambiguity, and the renewal provisions in the 2004 leases provide the BLM with discretion to decide whether to renew the leases.

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<sup>13</sup> A lease is not ambiguous merely because the parties disagree on the correct interpretation. *Thoman*, 155 IBLA at 267 (citing *Pollock v. Fed. Deposit Ins. Corp.*, 17 F.3d 798, 803 (5th Cir. 1994); *Stichting Mayflower Recreational Fonds v. Newpark Res., Inc.*, 917 F.2d 1239, 1247 (10th Cir. 1990)).

Finally, even if the 1966 lease renewal terms were in effect, they do not prohibit the BLM from exercising its discretion to decide whether to renew the leases. Section 1(a) of the 1966 leases granted to the lessee "the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals . . . ." It also provided that renewal of the leases beyond the primary term is subject to 43 C.F.R. § 3221.4(f) (1966) and the provisions of the lease. Section 3221.4(f) provides that the lessee "will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover." Based on this regulation, the BLM included a conditional renewal provision in section 5 of the 1966 leases.

Section 5 of the 1966 leases describes both the conditions with which the lessee must comply to establish a right to renew the lease and the limitations on revisions to the lease terms when the lessee does have a right to renewal:

**Renewal Terms.** The Lessor shall have the right to reasonably readjust and fix royalties payable hereunder at the end of the primary term of this lease and thereafter at the end of each successive renewal thereof unless otherwise provided by the law at the time of the expiration of any such period, and to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover; provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in the royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of this lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day. The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the Lessee that the lease cannot be successfully operated at a profit or for other reasons, and the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable hereunder if at the end of the primary or renewal period such an extension shall be in effect, but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time. *If the Lessee shall be entitled to renewal without readjustment except of royalties payable hereunder, the Secretary of the Interior may in his discretion increase the royalty rate prescribed in subsection (b) of Section 2 up to, but not exceeding (i) 5% during the first ten-year renewal period, (ii) 6% during the second ten-year renewal period, and (iii) 7% during the third ten-year renewal period.* The extent of readjustment of royalty, if any to be made under this section shall be determined prior to the commencement of the renewal period.

1966 leases § 5 (emphases added). As explained more fully below, since at least 1986, the Solicitor's Office has interpreted section 5 to mean that, even if the Secretary can and does, as a matter of discretion, renew the lease to extend the time to commence production, there is no right

to a further renewal when production<sup>14</sup> has not begun at the end of the first renewal-extension period.

The opening segment of the first sentence of section 5 describes the BLM's right to readjust the royalties and other terms and conditions at the renewal stage. This provision means that, as a general rule, if renewing the lease, the BLM is allowed to readjust not only the lease royalties but also other terms and conditions at the renewal stage, including stipulations to protect the surface.

The second segment of the first sentence following the semi-colon (highlighted in **bold** above) is a proviso that allows for three successive ten-year renewals, but conditions the lessee's right to those renewals on the lessee beginning production before the end of the primary term of the lease. The key conditioning language is at the end of the first sentence, as highlighted below:

**provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of the lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day.**

This highlighted clause, which begins with "unless," qualifies the very right to renew and not merely, as the company has asserted, the phrase describing the level of discretion the BLM has to readjust the other terms and conditions of the leases upon renewal. In other words, the proper meaning of the proviso is clear when the last clause is placed next to the provision it actually qualifies: "[T]he Lessee shall have the right to three successive ten-year renewals of this lease . . . unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day."

This conclusion is evident by the construction of the proviso. The two readjustment limitations are tied together and modify the "right to three successive ten-year renewals" language. The use of the conjunctive "and" between the two readjustment phrases ("with any readjustment in royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of the lease") ties them together as a single modifier to the right-to-renew language. Accordingly, the production requirement set out as the last clause of the proviso cannot merely qualify the readjustment phrases, as contended by TMM, but must apply to the overall right of renewal. In this way the proviso makes any non-discretionary renewal contingent on the lessee meeting the production requirement first, and then the conditions of that renewal regarding royalties and lease terms are specified in the readjustment phrases.

This conclusion is further reinforced by the second sentence of section 5 (the portion of section 5 underlined above). That sentence has three clauses. The first clause provides that the BLM has

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<sup>14</sup> None of the Department's solid minerals leasing regulations—including those in force at the time of the 1986 Solicitor's Opinion, those promulgated immediately thereafter, and those currently in force—expressly define the term "production." However, the rights granted in section 1 of the 1966 leases are described as mining, removing, and disposing of the copper and/or nickel minerals and associated minerals in, upon, or under the leased lands. These activities may be viewed to reasonably describe production.

the discretion to grant the lessee an extension beyond the primary term to begin production, if doing so would be in the interest of conservation or the lessee cannot operate the lease at a profit or for other reasons. The second clause states that, if an extension is granted, the lessee is entitled to a renewal in which the only revision allowed is to the royalties provision. These two clauses allow the lessee to use the first renewal as an extension time period to begin production. The third and final clause of the sentence, however, limits this right to a renewal if there is no production by the end of the extension: "but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time." This final clause reinforces the preceding sentence's condition precedent that there must be production before the lessee has a "right" to subsequent renewals. The second sentence therefore again makes production a precondition for any right to renew and disallows the lessee from obtaining a "right" to a renewal if no production has occurred during the primary term or an extension that the Secretary may grant for commencement of production.

The third sentence of section 5 (the portion of section 5 in *italics* above) describes the degree to which the BLM may readjust the royalty if the lessee is entitled to a "limited adjustment" lease renewal under the first sentence, i.e., the Lessee is "entitled to renewal without readjustment except of royalties payable hereunder . . . ." But without production, there would be no such entitlement.

Taken as a whole, the language of section 5 does not give the lessee a non-discretionary right to three successive renewals. Rather, production is the condition precedent for the lessee to obtain any lease renewals of right. There is no right of renewal if there has been no production before the end of the primary term or at the end of any renewal that the BLM grants to extend the time for the lessee to commence production. The fact that the lease terms expressly state that subsequent renewals of right are not available if no production occurs during any extension the BLM may grant for commencement of production reiterates the linkage between renewals of right and production. It would be incongruent to link only the benefit of unchanged lease terms to production, while leaving the lease renewal and royalty readjustment terms unaffected by a lack of production. Such arbitrary line drawing would create little incentive for the lessee to develop the minerals, which is the entire purpose for these mineral leases. In contrast, when production is a condition precedent for lease renewals, the lease renewal provision effectively serves as a minimal due diligence provision for the lessee.<sup>15</sup>

TMM asserts a different interpretation though. TMM reads the proviso of the first sentence of section 5 to grant the lessee a non-discretionary right of renewal, with such right of renewal limited only to royalty readjustment and with no readjustment of any other lease terms. TMM also reads the production requirement in the provision—"unless at the end of the primary term of

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<sup>15</sup> We note that section 14 of the 1966 leases does not change this conclusion. Section 14 sets forth the royalty rates that would apply in the second ten years of the primary lease term and in the first, second, and third ten-year renewal periods, if the lessee were to sink a shaft for underground exploration or development or otherwise begin commercial development within five years of obtaining the rights and authorizations for construction, operation and maintenance of the leased premises. According to TMM, in 1967, its predecessor in interest, INCO, sunk an 1100-foot shaft for exploration and development on lease MNES 01352. TMM asserts that section 14 contractually entitles it to these royalty rates during each of three renewal periods. However, nothing in section 14 provides for a non-discretionary right of renewal. Rather, section 14 merely describes the royalty rate that would apply during the first three ten-year renewals. It does not grant those renewals and does not state that sinking an exploration or development shaft entitles the lessee to those renewals.

this lease the Lessee shall not have begun production”—to modify only the readjustment limitation language, not the right to renewal language. Under TMM’s interpretation of the provision, if the lessee begins production within the primary term, the BLM may make only limited royalty adjustments, as provided in the leases, and no adjustments to any other lease terms. If, on the other hand, the lessee fails to begin production within the primary term, according to TMM, the lack of production negates only the readjustment limitations in the provision, and the BLM would be able to impose greater royalty readjustments and readjust other terms and conditions of the leases upon renewal. In other words, under the company’s reading, a right to three successive ten-year renewals begins immediately following the primary terms regardless of whether production has occurred, and section 5 only affects the parameters for the BLM’s readjustment of the lease terms in those non-discretionary three renewals.

In addition to being unsupported by the terms of the proviso as described above, TMM’s interpretation would allow it to hold the leases without any need to produce minerals in paying quantities for at least fifty years, and longer in this instance given the time to process the lease renewals. This interpretation not only conflicts with the plain wording of the 1966 lease terms but also is contrary to the very intent of the applicable statutory framework under which the Secretary may authorize mineral development with an expectation of revenues, not speculative land holdings. *See* Reorganization Plan No. 3 of 1946 § 402, 60 Stat. 1097, 1099-1100; 16 U.S.C. § 520. Interpreting the leases to allow for three non-discretionary renewals covering a thirty-year time span without the occurrence of the very underlying activity for which the leases are issued in the first place would defeat the purpose of entering into the lease. Such an interpretation would allow for the speculative holding of mineral rights, which is contrary to Congress’s intent to encourage productive mineral development while also providing a fair return to the American taxpayer.

Our interpretation that section 5 requires the lessee to begin production to obtain the benefit of any non-discretionary right of renewal is not only mandated by the lease terms, but is consistent with the regulation regarding renewal applications cited in the lease. Section 1(a) of the 1966 leases requires the renewals to be in accordance with 43 C.F.R. § 3221.4(f) (1966), which in turn requires that renewal applications “must be filed in a manner similar to that prescribed for extension of a prospecting permit in § 3221.3(a).” Under 43 C.F.R. § 3221.3(a), a prospector must show that he or she has “diligently performed prospecting activities” to support an application for an extension of a prospecting permit.<sup>16</sup> Allowing for the difference between a prospecting permit application and a lease renewal application, § 3221.3(a) requires that the lease renewal application include a showing of diligence in performing the lease activities (rather than the prospecting activities), which are reasonably viewed, consistent with the rights granted in section 1 of the lease terms, as mining, removing, and disposing of the copper and/or nickel minerals and associated minerals—i.e., production. Consequently, by stating that any renewals must be “in accordance with 43 C.F.R. § 3221.4(f),” the lease terms again identified production as the baseline for obtaining a renewal of right. Based on the lease terms as a whole, and because there has been no production during the primary term or the succeeding extensions through lease renewals that the BLM has granted, TMM has not satisfied the condition precedent

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<sup>16</sup> Under 43 C.F.R. § 3221.3(a) (1966), in addition to making a show of diligence, the applicant must file an application in triplicate within ninety days before the expiration date of the lease term and must pay a filing fee.

for obtaining a renewal of right and, therefore, the BLM has discretion to make a decision regarding whether to renew the leases even if the 1966 renewal terms were in effect.

In addition, the Solicitor's Office has already concluded that the BLM is not required to renew the 1966 leases as a matter of right if there has been no production. In 1986, the Associate Solicitor for the Division of Energy and Resources sent a memorandum to the Deputy State Director for the BLM Eastern States Office responding to three questions from the Deputy State Director.<sup>17</sup> The first question was whether it was possible to grant lease renewals (for the same leases that are at issue here) when the leases had never been in production. In response, the Associate Solicitor examined the terms of the lease to determine whether or not lack of production precludes extending the lease term. The Associate Solicitor then relied on the second sentence of section 5 (the portion of section 5 underlined above) to conclude that, while the leases may be extended for a period not exceeding ten years even though production has not occurred, if production does not occur during the period of extension, "no further extensions will be allowed in accordance with the terms of the lease." Consistent with this legal advice and the provisions of section 5 of the 1966 leases, the BLM granted a ten-year extension by renewing these two leases in 1989.

As noted above, the BLM also renewed the leases for a second ten-year period in 2004. Because no production had occurred by that time, the BLM's decision to renew the leases in 2004 was discretionary. The BLM's decision to renew the leases in 2004 does not impede the BLM from again exercising discretion regarding the lessee's application for a third renewal of the leases, particularly where this office has previously concluded that the agency need not allow additional pre-production renewals.<sup>18</sup>

It should be noted that the lessee's payment of minimum royalties in lieu of production does not alter the foregoing analysis.<sup>19</sup> The payment of minimum royalties is certainly one incentive to produce that was imposed by the 1966 leases, but that incentive worked in tandem with the one created by the leases' production precondition for mandatory renewals. The second incentive

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<sup>17</sup> See Memorandum from Associate Solicitor, Energy and Resources, signed by Kenneth G. Lee, Assistant Solicitor, Branch of Eastern Resources, to Deputy State Director, Mineral Resources, Eastern States Office, Bureau of Land Management, "Application for Minimum Royalty Waiver Submitted by INCO Alloys International, Incorporated for Leases ES 01352 and ES 01353" (Apr. 2, 1986) (Attached).

<sup>18</sup> TMM has made no showing in its pending renewal application under 43 C.F.R. § 3221.4(f) (1966) that would entitle it to a third and final renewal under section 5 of the 1966 leases. TMM has never begun production. TMM's predecessor, INCO, sunk a development shaft and conducted bulk sampling, but neither of those actions qualifies as beginning production. Without any showing of diligence in mining, removing, or disposing of the copper, nickel, and associated minerals, and without beginning production, TMM is not entitled to any further non-discretionary ten-year renewals. TMM has also asserted that the Department of the Interior is prohibited by 30 U.S.C. § 184(h)(2), as well as the Department's regulations at 43 C.F.R. § 3514.40 (2015), from "cancelling" TMM's interest in the leases at issue as TMM is a bona fide purchaser. But the cancellation regulations have no applicability where, as here, the decision is whether to renew a lease. Were BLM to exercise its discretion to deny the lease renewal application, it would not be cancelling the leases, as contemplated by 30 U.S.C. § 184(h)(2) and 43 C.F.R. § 3514.40, but rather would be allowing leases that have been in existence for fifty years without production to terminate by their own terms.

<sup>19</sup> The original leases do not mention minimum royalties as a way to fulfill the production requirement. And section 2(b) of TMM's 2004 leases merely provides that "[a]t the request of the lessee, made prior to initiation of the lease year, the authorized officer may allow in writing the payment of a \$3.00 per acre or fraction thereof minimum royalty in lieu of production for any particular lease year."

expired when no production occurred by the end of the extension period granted by the 1989 renewal. While the 2004 renewal leases retain the minimum royalties payment incentive, that fact has no impact on the renewal provision of the 2004 leases. Of course, for the leases to continue in effect during the renewal period, the lessee was required to continue to meet its obligation to pay royalties in lieu of production. However, that payment was and is not equivalent to production and does not somehow entitle the lessee to obtain a lease renewal of right; instead, it merely keeps the leases from terminating during the extension time period the BLM has granted through a lease renewal.

The fact that the payment of royalties in lieu of production cannot be the basis for establishing the right to renew, and cannot be a *de facto* means of extending a lease in perpetuity, is also clear from IBLA case law. In *General Chemical (Soda Ash) Partners*, the IBLA held that minimum royalties in lieu of production have “nothing to do with whether the Secretary, in looking at production from the mine of which the lease is a part at the end of the current lease term, will renew the lease for an additional term.” 176 IBLA at 9. The Board further held, “Moreover, ‘[t]he Secretary has the authority to encourage production and development of federally leased sodium resources *both through minimum development and production requirements and minimum royalties* imposed on each lease.’” *Id.* (emphasis in original) (quoting 1982 Solicitor’s Opinion, 89 Interior Dec. at 185). The leases here use precisely both mechanisms to encourage production, albeit not successfully in this instance.

#### Conclusion

For the foregoing reasons, the lessee has not established a non-discretionary right to a third ten-year renewal. Under the governing 2004 lease terms, the BLM has the same discretion regarding whether to renew the lease for a third time as it had in determining whether to grant the initial lease. While the 2004 lease terms give the lessee a preference over other potential lessees to lease the lands in question, they do not entitle the lessee to non-discretionary renewal of the leases.



Hilary C. Tompkins

Attachment



## United States Department of the Interior

OFFICE OF THE SOLICITOR  
350 South Pickett Street  
ALEXANDRIA, VIRGINIA 22304

BLM.ER.0335

APR -2 1986

### Memorandum

To: Deputy State Director, Mineral Resources (970)  
Eastern States Office, Bureau of Land Management

From: Associate Solicitor, Energy and Resources

Subject: Application for Minimum Royalty Waiver Submitted by  
INCO Alloys International, Incorporated for Leases  
ES 01352 and ES 01353

You have requested a legal opinion addressing three questions raised in a memorandum from the Milwaukee District Office. The answers along with these questions are set forth below.

Question No. 1: "Is it possible to grant lease renewals for these leases when the leases have never been in production? The lease documents and the regulations are not clear on this point. This question will surely be asked by INCO since the initial 20 year lease term expires on May 31, 1986."

A lease for hardrock minerals may be issued for a period not exceeding 20 years. The primary term on the subject leases was for a 20 year period. The lease shall be subject to a preferential right to renew for a term not to exceed 10 years at the end of the initial term and each succeeding term thereafter, upon such terms and conditions as may be incorporated in each lease or prescribed in the general regulations issued by the Secretary. 43 C.F.R. 3520.2-1(a)(2). The Secretary of the Interior has promulgated no regulations that require production as a prerequisite to the extension of such leases. Accordingly, we must look to the terms of the lease to determine whether or not lack of production precludes extending the lease term. Section 5 of the lease states that, "The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the lessee that the lease cannot be successfully operated at a profit or for other reasons . . . but the lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time." Therefore, according to the terms of the lease, such lease may be extended even though production has not occurred, for a period not exceeding 10 years. If production does not occur during the period of extension, no further extensions will be allowed in accordance with the terms of the lease.

Question No. 2: "INCO has been given waivers of minimum royalty payments for 5 years due to condition beyond its control (i.e.,



environmental analysis), and is now asking for a waiver based on additional conditions beyond its control (i.e., low copper and nickel prices). Has BLM set a binding precedence [sic] by granting the original waivers?"

INCO's failure to pay minimum royalties as set forth in section 2(c) of the lease, constitutes a breach of the covenants and conditions contained in the lease agreement. In section 6(b) of the lease, the United States reserved the right to waive any breach of the covenants and conditions contained therein but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach. Therefore, waiver of a prior breach of the minimum royalty payments, does not obligate the Bureau to grant any subsequent waivers.

Question No. 3: Section 2(c) of the lease states, "Lessee [sic] may . . . waive . . . minimum royalty payments for reasonable periods of time . . . ." Waivers were given for the first 5 years they were due, which is one-fourth of the initial lease term. Would granting of further waivers be conceived to extend beyond a "reasonable period?"

Section 2(c) states that, "Lessor may in its discretion, waive, reduce, or suspend the minimum royalty payment for reasonable periods of time in the interest of conservation or when such action does not adversely affect the interest of the United States. . . ." Whether or not the waiver period is "reasonable" must be determined by an examination of the purpose for which such discretion was exercised. Obviously if the reason for such waiver was due to a condition that only existed for 3 years, then a waiver of minimum royalty for a 10 year period would probably be deemed unreasonable. We suggest that the information submitted by the lessee be examined and considered in its entirety in order to determine what is reasonable given the facts set forth in that information. In addition, the reasonable period of time is to be viewed in the context of the "interest of conservation" and the "interest of the United States."

If you should have any further questions relating to this matter, please contact Barry Crowell at 274-0204.



Kenneth G. Lee  
Assistant Solicitor  
Branch of Eastern Resources

Attachment



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.es.blm.gov>



~~Ms.~~ Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)



[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)



Sincerely,

Mitchell \_ Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

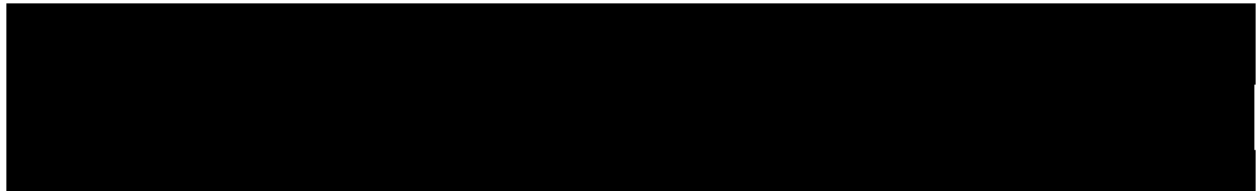

<http://www.es.blm.gov>




Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)



(b) (5)

The document contains two large rectangular areas of text that have been completely redacted with black ink. The first redaction is located at the top of the page, and the second is located below it. Both redactions cover multiple lines of text.

Sincerely,

Mitchell \_ Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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~~Ms.~~ Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)


[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)



Sincerely,

Mitchell \_ Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



File Code: 2670  
Date: DEC 14 2016

Neil Kornze  
Director  
Bureau of Land Management  
1849 C. Street NW, Rm. 5665  
Washington, DC 20240

Dear Director Kornze:

On June 3, 2016, the Bureau of Land Management (BLM) requested the Forest Service (FS) provide a decision on whether it consents to renewal of two leases currently held by Twin Metals Minnesota (TMM) for lands within the Superior National Forest (SNF) in northern Minnesota. These two Preference Right leases, MNES-01352 and MNES-01353, lie directly adjacent to and within three miles of the Boundary Waters Canoe Area Wilderness (BWCAW), respectively. The FS has considered the environmental conditions, nature and uses of the BWCAW by the public and tribes, economic benefits of mineral development and wilderness recreation, potential environmental consequences of mineral development on the leases, public opinion, rarity of copper-nickel sulfide ore mining in this region, and current laws and policy to inform the agency's decision.

Based on this analysis, I find unacceptable the inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same watershed as the BWCAW might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area. Therefore, the FS does not consent to renewal of Preference Right leases MNES-01352 and MNES-01353. A summary of the basis for my decision follows.

#### The BWCAW Is an Irreplaceable Resource

The 1.1 million acre the BWCAW is located in the northern third of the SNF in Minnesota, extending nearly 200 miles along the international boundary with Canada. It is the only large-scale protected sub-boreal forest in the lower 48 United States. The SNF holds 20 percent of the National Forest System's fresh water supply. These healthy forests with extremely high water quality also provide a host of watershed benefits, such as purifying water, sustaining surface water and ground water flow, maintaining fish habitats, controlling erosion, and stabilizing streambanks.

In addition to the existing high quality of the waters, the dramatic hydrogeology and interconnectedness of BWCAW's forests, lakes, streams, and wetlands make the region unique and susceptible to degradation. The BWCAW includes nearly 2,000 pristine lakes ranging in size from 10 acres to 10,000 acres, and more than 1,200 miles of canoe routes.

With Voyageurs National Park and Quetico Provincial Park, BWCAW is part of an international network of conserved land and wilderness. Quetico Provincial Park, located in Ontario, Canada,





lies within the same Rainy River watershed as the BWCAW. Quetico Provincial Park is an iconic wilderness class park, world renowned as a destination for backcountry canoeing with over 2,000 lakes and over one million acres of remote water-based wilderness. Together, Quetico and BWCAW form a core wilderness area of over two million acres.

Located northwest of the BWCAW, Voyageurs National Park was established by Congress in 1971 to preserve and interpret fur trade history and the importance of canoe travel routes in northern Minnesota. The park is at the southern edge of the boreal forest, and lies within the same Rainy River watershed as the BWCAW. It features spectacular canoeing and boating routes along with hiking trails exploring portage routes used by American Indians, early fur traders, and gold miners. Approximately 240,000 people visit Voyageurs National Park every year.

Just south of the BWCAW the Laurentian Divide separates three river systems: one flowing north to Hudson Bay; the Laurentian system flowing eastward towards the Atlantic through the Great Lakes, and the Mississippi system, flowing south to the Gulf of Mexico. TMM's two leases subject to FS decision are located in the Rainy River Watershed, which drains into the BWCAW, Quetico Provincial Park and Voyageurs National Park. There are four HUC (Hydrologic Unit Code) -10 sub-watersheds in the area of the leases and potential project site— Birch Lake, Stony River, Isabella River and Kawishiwi River. Surface water flows north and west from Birch Lake and the Kawishiwi River watershed through Kawishiwi River and several lakes into BWCAW. Water from the Stony River and the Isabella River watersheds flows into the Birch Lake watershed.

#### The BWCAW's Natural Environment

The SNF provides abundant and diverse habitat for thousands of breeding, wintering, and migratory species of terrestrial and aquatic wildlife, including over 100 species of migratory breeding birds in a zone with North America's greatest diversity of songbirds and forest-dependent warblers. The SNF also has one of the largest populations of gray wolves outside of Alaska, common loons, and moose. It has popular game species such as walleye, trout, deer, ruffed grouse, fisher, and beaver; and numerous rare species such as great gray owl, black-backed woodpecker, ram's-head ladyslipper and other orchids, and lake sturgeon. The SNF also has a great diversity and abundance of species common to the boreal forest biome, including three-toed woodpecker, boreal owl, boreal chickadee, lynx, moose, and grizzled skipper butterfly. All these species provide a wide array of crucial ecological, social and economic benefits and uses - from big game hunting and fishing to wildlife watching and research.

The BWCAW is also home to three threatened or endangered species: Canada lynx, northern long-eared bat, and gray wolf. Over the decades the BWCAW has been protected, it has provided refugia for species under stress or with declining populations, such as moose. In the face of climate change, the BWCAW may be critical to the continued existence of these species within Minnesota.

#### Cultural Resources and Treaty Rights Associated with the BWCAW

The BWCAW region has been home to Native Americans for millennia. The Minnesota Chippewa Tribe and three associated Bands – the Grand Portage Band, the Fond du Lac Band,

and the Bois Forte Band -- retain hunting, fishing, and other usufructuary rights throughout the entire northeast portion of the State of Minnesota under the 1854 Treaty of LaPointe. In the Ceded Territory all Bands have a legal interest in protecting natural resources, and the FS shares in federal trust responsibility to maintain treaty resources. Many resident Ojibwe, who ceded lands that became the BWCAW, continue to visit ancestral sites and traditional gathering and fishing locations within the wilderness. Tribes rely on natural resources like fish, wildlife and wild plants such as wild rice for subsistence and to support them spiritually, culturally, medicinally, and economically.

The northern border of the BWCAW is situated along a winding, 120-mile canoe route known locally as the Border Route, or Voyageurs Highway. This historic canoe route, bordered on the north by Ontario's Quetico Provincial Park, on the east by Grand Portage National Monument, and on the west by Voyageurs National Park, was utilized extensively by pre-contact Native Americans, European fur traders, and tribal groups such as the Dakota, Cree, and Ojibwe.

There are approximately 1,500 cultural resource sites identified on National Forest System (NFS) lands within the BWCAW. Many more cultural resources are believed to exist within the wilderness; as of 2015 only about 3 percent of the landscape has been intensively surveyed. Cultural resource sites include historic Ojibwe village sites, French and British period fur trade sites dating from 1730-1830, Woodland period village sites (2,000-500 years old) situated on wild rice lakes, Native American pictograph panel sites, Archaic period (8,000-3,000 years old) sites with copper tools, and large Paleoindian quarry sites such as those recently discovered on Knife Lake where Native Americans shaped stone tools up to 10,000 years ago.

### Wilderness Designation

The irreplaceable natural qualities of the BWCAW were recognized nearly a century ago in 1926 when the Department of Agriculture first set aside the area to preserve its primitive character. The Wilderness Act of 1964 officially designated land inside today's BWCAW as part of the National Wilderness Preservation System. The Boundary Waters Canoe Area Wilderness Act of 1978 expanded the wilderness area to 1,090,000 acres. The 1978 Act also established a separate Boundary Waters Canoe Area Mining Protection Area (MPA) to protect existing natural values and high standards of environmental quality from the adverse impacts associated with mineral development. Sec. 9, Pub. L. 95-495, 92 Stat. 1649, 1655 (1978). Congress provided very clear direction regarding the purposes of the BWCAW and MPA:

- (1) provide for the protection and management of the fish and wildlife of the wilderness so as to enhance public enjoyment and appreciation of the unique biotic resources of the region,
- (2) protect and enhance the natural values and environmental quality of the lakes, streams, shorelines and associated forest areas of the wilderness,
- (3) maintain high water quality in such areas,
- (4) minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting such areas.... Sec. 2, Pub. L. 95-495, 92 Stat. 1649 (1978).



The BWCAW Act bans authorization of federal mineral development within the BWCAW and MPA. However, the BWCAW Act does not govern federal mineral development on other NFS lands. Instead, the authorities governing federal mineral development on SNF lands outside the BWCAW and MPA are 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100. A decision withholding FS consent to the lease renewals is fully consistent with this statutory framework.

### World Renowned Research Laboratory

Because of its unique quality and character, the BWCAW is a living laboratory supporting dozens of research projects each year. Scientists of all disciplines rely on scarce areas like the BWCAW to support scientific inquiry and serve as control areas in the study of water quality, climate change effects, and natural ecological processes. The BWCAW is internationally known as a laboratory for ground-breaking research on forest fires, landscape patterns, biodiversity, wildlife, soils, nutrient cycles, other ecosystem processes, lakes, climate change, and recreational use of wilderness. This body of work is widely cited by scientists around the world. As an example, Miron Hinselman's work on forest fires in BWCAW, published during the 1970s-1990s, has been cited in more than 1,700 published studies. More recent BWCAW-related studies by Frelich and Reich have already been cited in 1,300 studies in 70 peer-reviewed science journals published in 20 countries on 4 continents. New results from BWCAW research are regularly presented at prestigious international meetings on scientific study.

### Recreation Values of the BWCAW

The BWCAW is one of the most visited areas in the entire National Wilderness Preservation System, and the System's only large lake-land wilderness. It provides an experience unique within the continental United States. The BWCAW's thousands of lakes and hundreds of miles of streams comprise about 190,000 acres (20 percent) of the BWCAW's surface area and provide for long distance travel by watercraft. The opportunity to pursue and experience expansive solitude, challenge and personal immersion in nature are integral to the BWCAW experience. Winter BWCAW visitors enjoy opportunities for skiing, dog-sledding, camping and ice fishing. Fishing is one of the most popular BWCAW activities throughout the year due to the range of species found in its waters, including smallmouth bass, northern pike, walleye, and lake trout.

### Social and Economic Environment

TMM's leases are located near Ely, in St. Louis and Lake Counties. The population of St. Louis County is concentrated in and around the City of Duluth, approximately 100 miles south of the lease area. The Iron Range communities of Ely, Hibbing, and Virginia are smaller secondary population centers. The 2010 U.S. Census shows area population has declined by nearly 10 percent since 1980, while Minnesota's population as a whole has increased by more than 30 percent. At least some of this population decline may be attributable to a loss of iron industry jobs. The Fond du Lac, Grand Portage, and Bois Forte reservations are exceptions to the regional trend - populations there have increased since 1990.

The median income of area communities is significantly lower than that of the State as a whole. It is also the case that the median income of the area's secondary population centers is generally

lower than that of St. Louis County as a whole. In some of these communities, such as Ely and Tower, the median household income is slightly more than half of the state median. In many individual communities, poverty rates are as high as or higher than statewide (with the exceptions of the secondary population centers of Hoyt Lakes, Soudan, and Tower).

Mining employment in St. Louis County declined from more than 12,000 jobs in 1980 to approximately 3,000 jobs in 2009. However, since mining employment can vary greatly from one year to the next, this decline does not represent a steady reduction. Mining-related employment is volatile and fluctuates due to changes in the market price of commodities being extracted. During the same time period, service-related employment (which includes the North American Industry Classification System categories for professional services, management, health care, education, arts/entertainment, and accommodation/food) in the study area has increased substantially, mirroring broader state and national trends.

Tourism is rooted in the region's unique recreation opportunities such as the BWCAW, and is broadly dependent on hunting, fishing, boating, sightseeing, and wilderness experiences provided by the region's high-quality natural environment. Industries associated with tourism (arts, entertainment, recreation, accommodation, and food services) account for nearly 13 percent of all employment in St. Louis County. The landscape and recreational opportunities attracts retirees and new residents.

Fishing in Minnesota lakes and rivers generates \$2.8 billion in direct annual expenditures and contributes more than \$640 million a year in tax revenues to the treasuries of the state and federal governments. The BWCAW itself has provided millions of visitors with a unique water-based recreation experience and provided an economic driver to local communities and the state of Minnesota. Leases MNES-01352 and MNES-01353 are surrounded by 29 resorts, outfitters, campgrounds and hundreds of homes and cabins. Similarly, Voyageurs National Park and Quetico Provincial Park both support vibrant tourism industries.

In 2015, 150,000 people visited the BWCAW. Economic benefits generated from recreation in the BWCAW average approximately \$44.5 million annually. Continued economic returns rely on sustaining BWCAW's natural resource quality and wilderness character.

#### The FS's Role with Respect to Hardrock Mineral Leases

TMM's two leases include a mixture of NFS lands reserved from the public domain and acquired NFS lands, with the vast majority being reserved lands. 16 U.S.C. § 508b applies to reserved NFS lands and provides in pertinent part:

"the Secretary of the Interior is authorized ... to permit the prospecting for and the development and utilization of [hard rock] mineral resources: provided, that the development and utilization of such mineral deposits shall not be permitted by the Secretary of the Interior except with the consent of the Secretary of Agriculture."

Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, applies to acquired NFS lands and provides in pertinent part:



“The functions of the Secretary of Agriculture and the Department of Agriculture with respect to the uses of mineral deposits in certain lands pursuant to ... 16 U.S.C. § 520 ... are hereby transferred to the Secretary of the Interior and shall be performed by him or ... by such officers and agencies of the Department of the Interior as he may designate: Provided, That mineral development on [lands acquired pursuant to the Weeks Act] shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes.”

In pertinent part, 16 U.S.C. § 520 provides:

The Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands acquired under the Act of March first, nineteen hundred and eleven, known as the Weeks law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States....

Under the Weeks Act, 16 U.S.C. § 515, the Secretary of Agriculture is authorized to purchase lands for the purposes of "the regulation of the flow of navigable streams or ... the production of timber."

The Department of the Interior adopted regulations providing for disposal of mineral resources pursuant to 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, by means of a leasing system governed by 43 C.F.R. part 3500. 43 C.F.R. § 3501.1(b)(1) & (3). The Department of the Interior's regulations provide that BLM's issuance of leases for hard rock minerals, including deposits of copper, nickel and associated minerals, on lands administered by another surface managing agency is "[s]ubject to the consent of the surface managing agency," 43 C.F.R. § 3503.13(a) & (c), which in the case of NFS lands is the United States Department of Agriculture, Forest Service. 16 U.S.C. § 1609(a). Specifically, 43 C.F.R. § 3503.13(a) relates to lands acquired under the Weeks Act while 43 C.F.R. § 3503.13(c) relates to the reserved lands.

On March 8, 2016, Department of Interior Solicitor Hilary Tompkins issued memorandum M-37036 (M-Opinion) in response to a BLM request asking "whether it has the discretion to grant or deny Twin Metals Minnesota's pending application for renewal of two hardrock preference right leases in northern Minnesota." The M-Opinion advises the BLM determining that, "Neither of the statutory authorities under which [MNES-01352 and MNES-01353] are issued—section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, and 16 U.S.C. § 508b—creates an entitlement to a lease or otherwise mandates the issuance of leases" and "[t]o the contrary, both authorities expressly condition leasing on surface owner consent (in this instance the Forest Service) and thus are discretionary." Therefore, on June 3, 2016, the BLM advised the Forest Service:

"[i]n light of the legal determination that the government has discretion in granting or denying the TMM lease renewal application, in accordance with 43 CFR 3503.20, 16 U.S.C. 508b, Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, and 16 USC 520, the



BLM requests that the USDA Forest Service provide, in writing, a decision on whether it consents or does not consent to the renewal of the leases."

Irrespective of the M-Opinion, the FS's consent to any hardrock lease renewal is mandated by 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099. Pursuant to 16 U.S.C. § 508b, the Secretary of Agriculture's right to consent to "the development and utilization of [hardrock] mineral resources" is coextensive with the Secretary of the Interior's authority to permit "the development and utilization of [hardrock] mineral resources." The fact that the Secretary of the Interior has implemented the authority 16 U.S.C. § 508b confers to permit "the development and utilization of [hardrock] mineral resources" by means of a regulatory scheme containing a number of decision points simply means that the Secretary of Agriculture's statutory consent authority with respect to hardrock mineral development and utilization – authority expressed in terms identical to the Department of Interior's authority – similarly extends to the same universe of decision points providing those decisions have the potential to affect NFS surface resources.

Whereas pursuant to Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, the Secretary of the Interior's authority per 16 U.S.C. § 520 "to permit the ... development ... of the [hardrock] mineral resources of the lands acquired under ... the Weeks law..." is contingent upon the Secretary of Agriculture's determination that "such development will not interfere with the primary purposes for which the land was acquired...." It is well established that mineral "development" is authorized by a lease, whether it is one issued in the first instance or a subsequent renewal. Indeed, the M-Opinion explicitly recognizes that "the entire purpose" of a mineral lease is "for the lessee to develop the minerals...." Another M-Opinion finds that since the 1970s hardrock prospecting permits for NFS lands, which are the precursor for the issuance of hardrock mineral leases including MNES-01352 and MNES-01353, have uniformly included the condition that "no mineral development of any type is authorized hereby." M-36993, Options Regarding Applications for Hardrock Mineral Prospecting Permits on Acquired Lands Near a Unit of the National Park System (1998 WL 35152797 (April 16, 1998)). *Missouri Coalition for the Environment*, 124 IBLA 211, 217 (1992) ("mineral development ... may only be authorized upon issuance of a [hardrock] lease); *John A. Nejedly Contra Costa Youth Association*, 80 IBLA 14, 26 (1984) (concurring opinion) (development under a hardrock lease "is a logically foreseen result of successful prospecting"). So again, the fact that the Secretary of the Interior has implemented the authority Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, confers to permit the development of hardrock mineral resources on lands acquired pursuant to the Weeks Act by means of a regulatory scheme containing a number of decision points simply means that the Secretary of Agriculture's consent authority with respect to hardrock mineral development – authority expressed in terms identical to Interior's authority – similarly extends to the same universe of decision points providing those decisions have the potential to affect NFS surface resources.

Of course, under Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, the Secretary of Agriculture cannot block mineral development absent a finding that "such development will ... interfere with the primary purposes for which the land was acquired...." Here, since the small percentage of acquired lands subject to TMM's two leases were purchased in accordance with the Weeks Act, those primary purposes were "the regulation of the flow of navigable streams or ... the production of timber." As discussed below, TMM hopes to construct



and operate an underground mine on its two leases – not a strip mine. At this juncture the FS consequently cannot definitively say that the mineral development which TMM hopes to conduct on its leases will interfere with those purposes. Uncertainty about this question is of little import, however, since the lands subject to TMM's leases are an admixture of lands reserved from the public domain and acquired lands with the reserved lands being in excess of 90% of the acreage included in both leases. Further, there is no reason to believe that TMM's mineral development exclusively could be confined to the acquired lands. The FS's conclusion that the agency should exercise the absolute discretion that 16 U.S.C. § 508b confers upon it to withhold consent to the renewal of TMM's leases insofar as the reserved lands are concerned accordingly has preclusive effect with respect to the lands acquired pursuant to the Weeks Act.

### The Role of Forest Plans

The FS develops land and resource management plans to provide a framework that protects renewable surface resources. This framework balances both economic and environmental considerations to provide for multiple uses and sustained yield of NFS renewable surface resources.

The 2004 SNF Plan at D-MN-1 states: "Exploration and development of mineral and mineral material resources is allowed on NFS land, except for federally owned minerals in designated wilderness and the Mining Protection Area." The Plan also provides that the FS will manage the BWCAW in a manner that perpetuates and protects its unique natural ecosystems, provides an enduring wilderness resource for future generations, and provides opportunities for a primitive and unconfined recreation experience.

Although forest plans provide a framework, they do "not authorize projects or activities or commit the Forest Service to take action" (36 C.F.R. § 219.2(b)(2)). Instead, forest plans provide broad management guidance and ensure all program elements and legal requirements are considered prior to critical project level decisions, such as a decision to authorize timber harvesting, grazing or mining operations. As the Supreme Court has determined, forest plans:

"...do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations. Thus, for example, the Plan does not give anyone a legal right to cut trees, nor does it abolish anyone's legal authority to object to trees being cut. *Ohio Forestry Ass'n. v. Sierra Club*, 523 U.S. 726, 733 (1998)."

Following Forest Plan approval, proposals are evaluated on a case-by-case basis. Proposals inconsistent with Plan direction may not be authorized (16 U.S.C. §1604(i)). However, a proposal might reveal the need to amend plan direction that would otherwise stand as an impediment to a proposal. Yet a proposal's consistency with applicable Plan standards and guidelines is not an assurance that the proposal will be authorized. The FS retains discretionary judgment concerning overall multiple use, sustained yield management of NFS lands. Further, denial of a proposal consistent with applicable Plan standards and guidelines does not require alteration of the applicable direction.



The SNF Plan does not prohibit mineral development within the management area where TMM's leases are located. But the FS is not bound to approve TMM's application for renewal of its leases either. Neither the statute nor regulations governing forest plans mandate the approval of proposals consistent with a Forest plan. Moreover, as discussed above, pursuant to the express terms of 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, the FS retains discretion to withhold consent to TMM's lease renewals given the leases' purpose is mineral development, as recognized by the M-Opinion. Specifically, the FS denial of consent to TMM's lease renewals is warranted for the reasons set out in the M-Opinion and also because the bar in both 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, against mineral development absent the consent of the Secretary of Agriculture applies with equal force to the initial issuance of the lease and any renewal of that lease. Accordingly, the FS may consider any potential negative environmental impacts that might flow from mineral development on those leases and their effect on future national forest conditions.

#### National Environmental Policy Act (NEPA) Applicability

NEPA ensures federal agencies take into account significant environmental matters in their decision making, and that they disclose to the public that the agency has considered environmental concerns. An environmental impact statement (EIS) must be prepared when an agency proposes to undertake a major federal action that may significantly affect the quality of the human environment. In summary, NEPA tasks agencies to assess changes in the physical environment caused by the action it proposes to authorize.

Council on Environmental Quality (CEQ) regulations implementing NEPA are clear that a proposal "exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated." 40 C.F.R. § 1508.23. This provision is reinforced by CEQ's instruction that major federal actions "includes actions with effects...." 40 C.F.R. § 1508.18. FS NEPA regulations establish a four part test for determining when NEPA obligations arise, including whether "[t]he Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated...." 36 C.F.R. § 220.4(a)(1). Thus, when the FS declines to authorize a private application, the mere contemplation of that application does not constitute a federal proposal and the FS is not required to conduct an environmental analysis under NEPA.

As it is my determination not to consent to issuance of lease renewals based on the application before the agency at this time, preparation of an environmental analysis is not required. As further explained below, no significant environmental effects will occur as a result of the agency's no-consent determination.

This outcome is entirely in keeping with NEPA and its implementing regulations. Situations like this pose the unusual question of whether NEPA requires consideration of environmental effects of federal actions that foreclose development or use of natural resources. NEPA does not require a federal agency to consider effects arising from an action it has declined to allow third parties to undertake when that does not represent change in the physical environment caused by the federal



action itself. In other words, only federal actions with significant environmental effects trigger NEPA's detailed statement requirement. Actions which do nothing to alter the natural physical environment and maintain the environmental status quo are not subject to NEPA.

The FS routinely prescreens non-mineral, special use authorization applications and agency regulations direct that non-conforming uses do not need to receive further evaluation and processing. See 36 C.F.R. § 251.54(e) (2). The FS does not have regulations governing consideration of discretionary mineral leasing applications, but agency practice is consistent.

As recently as 2014, Regional Forester Atkinson rejected a request for consent to a prospecting permit on the Hiawatha National Forest without preparing a NEPA document. Diverting scarce budgetary resources to prepare NEPA documents for proposals that will not move forward trivializes NEPA and diminishes its utility in providing useful environmental analysis for actions that the agency accepts and actively evaluates for approval.

In these circumstances, the Court of Appeals' Eighth Circuit holding that a FS decision to refrain from using herbicides as a method of vegetation control is not a "proposal or action to which NEPA can apply" pertains. *Minnesota Pesticide Information and Educ., Inc. v. Espy*, 29 F.3d 442, 443 (8th Cir. 1994).

#### NFS Land Management Perspectives

Half of a century has passed since TMM's leases were issued in 1966. The original leases were issued prior to statutes such as the National Historic Preservation Act of 1966, National Environmental Policy Act of 1969, Clean Water Act of 1972, Endangered Species Act of 1973, National Forest Management Act of 1976, and Boundary Waters Canoe Area Wilderness Act of 1978. Without these laws in place the environmental consequences of potential "commercial development [of the nickel and copper deposit] by a large-scale mining operation" originally envisioned by BLM in 1956 on what are now TMM's leases received markedly less consideration in comparison with current requirements. Given changes in policy and information availability, it is not unreasonable to anticipate a higher level of interest and concern regarding these consequences than when TMM's leases were originally issued, as demonstrated in the examples to follow.

In 1991 the Minnesota Department of Natural Resources recognized the value of the BWCAW for its scenic beauty and solitude by establishing a State Mineral Management Corridor. In light of surface water flow and recreational uses, no surface disturbance or state leases may be offered in the Corridor. The State Mineral Management Corridor overlaps with federal lease MNES-1353.

The federal relationship with Native American tribes has also evolved significantly over the 50 years since the TMM leases were issued. The FS has a legal obligation to acknowledge rights of Tribes and tribal members, including off-reservation rights to hunt, fish, gather and continue cultural and spiritual practices. Such recognition did not occur until the late 1970s when Indians began to assert their rights to off-reservation resources in federal court, including those rights to fish and gather wild rice. (E.g.: *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. State of Wis.*, 653 F. Supp. 1420 (W.D. Wis. 1987) (LCO III), *Lac Courte Oreilles Band of Lake*

*Superior Chippewa Indians v. State of Wis.*, 668 F. Supp. 1233 (W.D. Wis. 1987) (LCO IV)). No documentation suggests that consultation occurred or treaty rights were considered in the 1966 decision to grant the two leases.

Finally, since the last renewal of TMM's leases in 2004, we have gained experience with copper sulfide ore mining in different parts of the country. It is clear that these types of mines pose substantial risk of failure and environmental mitigation and remediation technologies are limited, and often ineffective, as discussed later in this letter. Awareness of the environmental effects of mining, specifically those from copper-nickel mining, has increased since 2004. While economic values are important to area communities and the nation, preserving Wilderness Areas and their associated qualities also have national and local support and precedent.

#### Evaluation of the Present Lease Application

In light of the M-Opinion's legal conclusion that TMM does not have the right to automatic renewal of its leases MNES-01352 and MNES-01353, on March 8, 2016 the BLM notified TMM that the agency would review the company's lease renewal application using the same criteria that are employed in deciding whether to grant initial hardrock mineral leases. The BLM's letter also specified that as part of its consideration of TMM's lease renewal application, the BLM would ask the FS whether it consents to the leases' renewal. In response to the BLM's June 3, 2016 letter making that request of the FS, the agency began considering whether to consent to the renewal of TMM's leases based upon the agency's recognition that it has full discretion to consent or withhold consent to the renewal of TMM's two leases.

As noted above, CEQ and FS NEPA regulations make clear that an application must be accepted by the agency as a proposal before NEPA obligations are triggered. At this time, the FS will not consent to lease renewal based on the submitted application and therefore does not have a goal that it is actively pursuing to authorize such activities. For this reason, no NEPA analysis is required.

#### Acid Mine Drainage

Bedrock geochemistry in northeastern Minnesota plays a large role in the low buffering capacity of the lakes and streams in the region. Both the Minnesota Pollution Control Agency and the Environmental Protection Agency (EPA) have identified the surface waters of northeastern Minnesota as sensitive to changes in pH, acid deposition, and acid runoff. Unlike surface waters bounded by carbonate bedrock, or relatively thick carbonate rich glacial till where neutralization of acid runoff occurs through dissolution of limestone and exsolution of carbon dioxide from water, the waters of northeastern Minnesota are largely underlain by igneous and metamorphic bedrock with thin overlying soils and surficial deposits with little acid neutralization capacity.

A risk of mining development is acid mine drainage (AMD). AMD generally occurs when sulfide minerals present in ore bodies and rock overburden are exposed to air and water. The exposure to air (oxidation) and water (hydrolysis) creates sulfuric acid, which subsequently increases water pH and leaches harmful metals such as copper, zinc, lead, cadmium, iron and nickel. FS data indicates between 20,000 and 50,000 mines currently generate acid on lands managed by the agency. Negative impacts from these mines affect 8,000 to 16,000 km of



streams. While AMD can originate naturally from the ore body itself, its likelihood is dramatically increased by the generation of any mining product (stockpiles, overburden, and tailings) exposed to air and water, and can continue for decades.

Hardrock mines in sulfide bearing mineralization are known worldwide for producing AMD that requires continuous management and perpetual water treatment. Production of AMD is prevalent in all mining operation elements: construction, waste rock, tailings, and mine structures such as pits and underground workings. Acid drainage is one of the most significant potential environmental impacts at hardrock mine sites.

Water from a mine site could potentially enter streams and lakes through wastewater treatment plant discharges, uncollected runoff and leakage, concentrate spills, pipeline spills, truck accidents, spillway releases, tailings dam failures, water collection and treatment operation failures, and post-closure failures. All carry some risk to the environment. The magnitude and setting of a failure would drive the significance of the environmental risk and its potential impact.

The AMD increases lake and stream acidity, with potential risks to aquatic life including sport fisheries. A decline in water quality and aquatic species would have a negative effect on recreational visitors to the BWCAW. For example, the USGS estimated that in 2010 approximately 3,000 miles of Pennsylvania streams degraded by acid mine drainage led to approximately \$67 million in lost sport fishing revenue each year.

Mining accidents are inherently unpredictable and can result from geotechnical failures or human error. Other circumstances that can affect the likelihood of mining failures or discharges include changing metals markets, financial crises, political events, and climate change. In addition, climatic trends affecting the frequency and magnitude of storm events and seasonal temperatures could lead to unpredicted environmental changes in vegetative composition, water quality and quantity, and wildlife habitat making the environment more susceptible to damage resulting from mining operations.

There is a direct flow of water from the lands subject to TMM's leases to the BWCAW. Specifically, the leases are located within the South Kawishiwi River Watershed and the Birch Lake Watershed which both are catchments of the Rainy River Watershed. Water flows from the lands embraced by the northern lease into the South Kawishiwi River which in turn flows into Birch Lake. Water from the lands embraced by the southern lease also flows into Birch Lake and Birch Lake empties into the main Kawishiwi River and then into the BWCAW.

TMM's leases overlay the Duluth Complex known for nickel-copper-platinum group element ore deposits. Due to the inherent sulfide chemistry of this ore type, mining facilities and byproducts can produce significant amounts of acid. Consistent with the footprint and infrastructure of similar mines, as well as publically available preliminary information from TMM about this specific site, TMM's potential project area could include underground mine(s) producing mainly copper and nickel, plus smaller amounts of other metals. TMM's project would require a concentrator facility (potentially 1-2 miles west of the mine(s)), a tailing storage facility (potentially 13 miles southwest of concentrator), and connecting utility corridors. The utility corridors would include roads, rail lines, power transmission lines, natural gas pipelines, tailing



and concentrate pipelines, and water pipelines. TMM's Pre-Feasibility Study also reveals that its project would involve four delineated ore bodies – Maturi, Maturi Southwest, Birch Lake, and Spruce Road – all of which are north and east of the Laurentian Divide and thus in the watershed draining towards BWCAW.

TMM's mining operations are expected to dispose of some waste rock and tailings underground. Other waste rock and tailings would be disposed of using surface facilities. All of the waste rock and tailings derived from the sulfide ore bodies on the leases would have a high likelihood of oxidizing and becoming sources of AMD. TMM's Technical Report on Pre-Feasibility Study shows that TMM's subsurface mining operations would occur north of the Divide and present BWCAW contamination risks. That is also true of TMM's ore processing concentrator facilities. But TMM's Technical Report on Pre-Feasibility Study shows that TMM's tailings disposal facilities potentially would be south of Laurentian Divide in the Superior Watershed, which drains away from the BWCAW.

There are limitations in understanding the full contours of the mineral operations that ultimately might occur on TMM's leases, including the location of important features such as its tailings disposal facilities. The pre-feasibility study is an economic feasibility analysis, not TMM's final proposal to mine the hardrock mineral deposits. But pursuant to the terms of both 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, the FS's consent is required for hardrock mineral development and the purpose of any lease, whether it is one issued in the first instance or a subsequent renewal, is mineral development. Indeed, the M-Opinion explicitly recognizes that "the entire purpose" of a mineral lease is "for the lessee to develop the minerals...." Another M-Opinion reports that since the 1970s hardrock prospecting permits for NFS lands, which are the precursor for the issuance of Preference Right hardrock mineral leases including MNES-01352 and MNES-01353, have been issued subject to the condition that "no mineral development of any type is authorized hereby." M-36993, Options Regarding Applications for Hardrock Mineral Prospecting Permits on Acquired Lands Near A Unit Of The National Park System (1998 WL 35152797 (April 16, 1998)). *See also John A. Nejedly Contra Costa Youth Association*, 80 IBLA 14, 26 (1984) (concurring opinion) (development under a preference right lease "is a logically foreseen result of successful prospecting").

Another factor relevant to assessing the likelihood of AMD if TMM develops a mine on the lands subject to the two leases it seeks to renew is that the waters in the Rainy River watershed flow largely through bedrock fractures with limited carbonate rock surface area. Therefore the watershed has low capacity to buffer AMD.

In sum, given the hydrology and hydrogeology of this area, the likelihood of these ore bodies being exposed to water is very high, and given these particular ore bodies' composition, resulting drainage from the mine workings and mining wastes are likely to be highly acidic.

#### Lessons from Similar Copper Sulfide Mines

Contamination from mining operations can also occur instantaneously via catastrophic failure of the type that occurred in 2014 at the Mount Polley Mine in British Columbia, Canada and at other copper mines. A review of water quality impacts from 14 operating U.S. copper sulfide



mines found: 100% of the mines experienced pipeline spills or accidental releases; 13 of 14 mines' water collection and treatment systems failed to control contaminated mine seepage resulting in significant water quality impacts; tailings spills occurred at 9 operations; and a partial failure of tailing impoundments occurred at 4 mines. The inherent risks of mining hardrock mineral deposits on the lands leased to TMM set a high bar for potential mineral development within this watershed due to potentially severe consequences for the BWCAW resulting from such failures. Because of the hydrology and hydrogeology of this particular area, should contamination occur, it could cover a very broad region.

Recent reviews of similar mining proposals in Minnesota and Alaska highlight inherent risks of metal mining to natural resources, and provide examples of risks associated with long term effectiveness of planned containment strategies. In Minnesota, the Final Environmental Impact Statement for nearby NorthMet Mining Project and Land Exchange recognizes that no matter the depth of analysis and planned containment strategies there remain uncertainties associated with mine development, operation and long-term water and waste rock treatment.

Similarly, the EPA, in a Proposal Determination Pursuant to Section 404(c) of the Clean Water Act for the Pebble Mine in Alaska, warns that, "There is also real uncertainty as to whether severe accidents or failures, such as a complete wastewater treatment plant failure or a tailings dam failure, could be adequately prevented over a management horizon of centuries, or even in perpetuity, particularly in such a geographically remote area subject to climate extremes. If such events were to occur, they would have profound ecological ramifications." While the ramifications of these risks are possibly greater in the case of the Pebble Mine, due to its location, the BWCAW shares many similarities in terms of hydrogeology, extreme weather and remoteness.

#### Unique Attributes of Copper Sulfide Ore Mining in the BWCAW Region

Many operating copper mines in the United States are situated in the arid southwest or other drier areas of the Nation. Northern Minnesota has an established history of taconite mining - indeed, the region to the west of the lease sites is known as the "Iron Range." However, taconite is an iron-bearing oxide ore. Mining of the copper-nickel sulfide ore found on TMM's leases is untested in Northern Minnesota. This lack of experience with copper-nickel sulfide ore mines in environments with the complex hydrogeology of northern Minnesota complicates assessment of the consequences of mining operations on TMM's leases, which could occur if those leases are renewed.

Another variable in assessing the consequences of these operations is climate change. In Minnesota, mean annual temperatures are expected to continue rising and precipitation is expected to increase, along with the size and magnitude of weather events. An increase in precipitation and water supply in association with significant events could exacerbate the likelihood of AMD and water resource contamination. The projected changes in climate and associated impacts and vulnerabilities would have important implications for economically important timber species, forest dependent wildlife and plants, recreation, and long-range planning. The combined impacts of contaminants from mineral development and climate change could impact the ecosystem resilience of the BWCAW and the Superior National Forest outside of the wilderness.



The NorthMet Mining Project and Land Exchange, the first copper-nickel mine proposed in Minnesota, has similar concerns regarding AMD, climate change, and water quality. These concerns were addressed in NorthMet's final EIS through engineering, permitting, and monitoring requirements. Significantly, the NorthMet project is located in an area either previously disturbed and/or surrounded by brown-field taconite open pit mines and waste piles in the Laurentian Watershed, which drains away from the BWCAW. In contrast, TMM's leases are in close proximity to the BWCAW and within its high quality watershed resource of outstanding value. The inherent and legislated wilderness values and untrammelled qualities of the BWCAW contrast with the extensively disturbed surroundings of NorthMet's location. Additionally, if there is any potential for NorthMet's copper-nickel mining project to affect the BWCAW and MPA, this potential would be far less than that associated with any copper-nickel mining operations TMM might ultimately conduct.

If TMM ultimately conducts mining operations on lands subject to its two leases and they result in AMD, metal leaching, and water contamination, very few of the available containment and remediation strategies would be compatible with maintaining the BWCAW's quality and character. Available containment and remediation strategies such as sediment basins, water diversions, or construction and long-term operation of water treatment plants have the potential to deleteriously affect the BWCAW. Of particular concern, given the location of TMM's leases, is the effectiveness of available methods to counteract AMD in the case of seepage, spills, or facility failures. Water is the basic transport medium for contaminants. Consequently, all measures aimed at controlling AMD generation and migration involve controlling water flow. To reduce the generation and release of AMD, the infiltration of meteoric water (rain and snow) can be retarded through the use of sealing layers and the installation of under-drains, respectively. Diversion of contaminated water most commonly requires installation of ditches or sedimentation ponds. But even with the use of these measures successful long-term isolation of intercepted contaminated groundwater is, at best, very difficult to achieve.

Moreover, even if available remediation techniques to handle contaminated water, such as flushing, containment and evaporation, discharge through wetlands, neutralization and precipitation, desalination, water treatment plant construction and operation, utilization of ditches or sedimentation ponds, and installation of cut-off walls, trenches or wells, are effective, very few, if any, of them are compatible with maintaining the quality and character of BWCAW and MPA, as required by the Boundary Water Canoe Area Wilderness Act. Given the TMM's leases' proximity to the BWCAW's boundary (adjacent to in one case and less than 3 miles distant in the other) and the direct transport route of surface water from Birch Lake and the Kawishiwi River, it is reasonable to expect direct effects of any mining operations on those leases to the BWCAW and MPA.

#### Potential Impacts to Water, Fish, and Wildlife

As noted above, the potential for environmental harm is inherent to copper-nickel and other sulfide-bearing ore mining operations. This potential exists during all phases of mine development, mineral extraction and processing, and long-term mine closure and remediation. Expected environmental harm could encompass damage to both surface and ground water resources, including changes in water quantity, quality, and flow direction, contamination with acid and leached metals resulting from AMD and tailings disposal facility failures, and more. It



is also well established that this environmental damage can adversely affect fish populations and aquatic ecosystems directly and by indirect effects on food supplies and habitat. Recognizing this potential harm, the second edition Rainy-Lake of the Woods State of the Basin Report (2014) recommends scientifically examining the effect of new mining proposals on water quality in the Rainy River Watershed.

TMM's leaseholds lie within the Rainy River's Birch Lake Sub-Watershed (HUC 10) which the SNF has identified as a priority watershed per the FS's Watershed Condition Framework. The Framework is a comprehensive approach for: 1) evaluating the condition of watersheds, 2) strategically implementing integrated restoration, and 3) tracking and monitoring outcome based program accomplishments. According to the Watershed Restoration Action Plan for Birch Lake the watershed is currently functioning at risk, based on fair ratings for aquatic biotic condition, water quality condition, aquatic habitat condition, soil condition, and fire effects/fire regime condition. The Action Plan recognizes that further development in the watershed has the potential to move the watershed from its suboptimal level of functioning at risk to the worst level of impaired functioning.

As noted previously, the BWCAW and SNF are home to dozens of sensitive species. Three species, the Canada Lynx, gray wolf and northern long-eared bat, are listed as threatened. Crucially, the BWCAW and SNF are considered critical habitat for the threatened Canada Lynx, which requires spruce-fir boreal forest with dense understory. Canada Lynx cover large areas, traveling extensively throughout the year, meaning that development and habitat fragmentation can affect the viability of lynx populations.

The threatened northern long-eared bat lives in both Lake and St. Louis County, where TMM's leases are located. The northern long-eared bat spends its winter hibernating in caves. In summer it roosts in both live and dead trees, as well as caves. Northern long-eared bat populations are under significant stress from White-nose Syndrome, which has caused drastic declines in bat populations across the country. Increased impacts to their habitat could exacerbate population decline.

The gray wolf population in the western Great Lakes, including the BWCAW, was re-listed as threatened in 2014 by the Fish and Wildlife Service. Gray wolves also cover large areas to hunt, so wolf populations can be impacted by development and habitat fragmentation. Other animals benefit from wolves living in northern Minnesota as carcasses wolves leave behind feed many other animals.

Northern Minnesota is one of the few places in the continental U.S. where visitors can see moose. However, the state's iconic moose population continues to decline – decreasing by approximately 60 percent in the last decade, according to Minnesota's State Department of Natural Resources. Given this population decline, the U.S. Fish and Wildlife Service (FWS) initiated a status review for the U.S. population of northwestern moose (i.e., those in Michigan and Minnesota). The status review was initiated as a result of a positive 90-day finding on a petition to list moose under the Endangered Species Act. FWS determined information in the petition provided substantial scientific or commercial information indicating that species listing may be warranted.

Moose often gather around ponds, lake shores, bogs and streams where they feed on aquatic vegetation. They are under stress from climatic change, likely due to a greatly increased number of ticks brought about by warmer summers. Therefore they are ever more dependent on the extensive, high quality habitat available in the BWCAW. Additional development, such as mining activity and associated road building, in the vicinity of the BWCAW could lead to habitat fragmentation that may further stress the moose population. While contamination of BWCAW waters by acid and leached metals could lead to habitat degradation that would also add to the moose population's stress.

The potential impacts of mining activities also could affect other species dependent upon forested areas through habitat fragmentation, increased dispersal of invasive plant and animal species, and alterations to wildlife migration and residence patterns.

#### Social and Economic Considerations

The State of Minnesota has primary responsibility under the Clean Water Act of 1972 to protect the water quality of the BWCAW and identifies the wilderness area as an "outstanding resource value water" under Minnesota Rules (Minn. R. 7050.0180). That section also provides that "[n]o person may cause or allow a new or expanded discharge of any sewage, industrial waste, or other waste to waters within the Boundary Waters Canoe Area Wilderness."

On March 6, 2016, Minnesota Governor Mark Dayton sent, and publicly released, a letter to TMM stating that he had directed the State's Department of Natural Resources "not to authorize or enter into any new state access or lease agreements for mining operations on those state lands" near the BWCAW. The Governor stated he has grave concerns about the use of state surface lands for mining near the BWCAW:

"[M]y concern is for the inherent risks associated with any mining operation in close proximity to the BWCAW and ... about the State of Minnesota's actively promoting advancement of such operations by permitting access to state lands."

"As you know the BWCAW is a crown jewel in Minnesota and a national treasure. It is the most visited wilderness in the eastern US, and a magnificently unique assemblage of forest and waterbodies, an extraordinary legacy of wilderness adventure, and the home to iconic species like moose and wolves. I have an obligation to ensure it is not diminished in any way. Its uniqueness and fragility require that we exercise special care when we evaluate significant land use changes in the area, and I am unwilling to take risks with that Minnesota environmental icon."

As a partner in managing and conserving natural resources within the State of Minnesota, the FS takes Governor Dayton's statements seriously. The FS shares many of the Governor's concerns. These shared concerns also support the decision to withhold consent to renewal of leases MNES-01352 and MNES-0153.

The FS was aware of negative public sentiment regarding other mineral related projects on nearby SNF lands and many people's concern about the possible renewal of leases MNES-01352 and MNES-01353. Consequently, on June 13, 2016 the FS announced it would provide a 30-day public input period commencing June 20, 2016 and including a listening session on July 13,



2016 to better understand public views about renewal of TMM's two leases. A second listening session on July 19, 2016 was subsequently announced.

Individuals and organizations expressed passionate views both in support of and opposition to renewing the leases during the input period and listening sessions. In addition, TMM submitted comments for the record during the public input period. Overall the FS received over 30,000 separate communications in response to the listening sessions. In total, this input provided FS decision makers the fullest possible understanding of public views and concerns regarding the proposed lease renewals.

Local sentiment is similarly mixed regarding the desirability of TMM developing a mine on the lands subject to its two leases. Northeastern Minnesota has a long history of mining, and much of the local economy along the Iron Range remains dependent on iron mining. Ely, Virginia, and other local communities, have a long-standing social identity associated with mining. During the two listening sessions, elected officials, union representatives, and miners expressed their concerns regarding the future of these communities, mining-associated tax revenues that support schools and local services, and high-paying jobs for future generations. These mining proponents often cited the potential economic benefits of mining, should TMM develop a mine on its leases. They also stated that young people and families are leaving the area due to a depressed local economy. Mining proponents also referred to the need for strategic metals for American industry and national defense, including their use in sustainable technologies such as wind turbines and hybrid cars.

Those who oppose TMM's development of a mine on the lands subject to its two leases emphasize the copper-nickel mining industry's history of causing serious environmental harm, the potential mine's proximity to the BWCAW, the interconnected hydrology of the leased lands and the BWCAW, and the probable negative impacts to water quality, quantity and aquatic ecosystems downstream from any mine TMM establishes. These mining opponents often stated that mining has created a boom-bust economy that only now has stabilized with the creation of sustainable recreation-based jobs reliant on an unspoiled environment. They also raised concerns about the probable negative impacts any TMM mine would have on the quality of individuals' future recreational experiences in the BWCAW, maintenance of the BWCAW's wilderness character, and preservation of the BWCAW for future generations.

In its Technical Report on Pre-Feasibility Study, TMM estimates the company's initial capital investment for mine construction will be \$2.77 billion while over the projected 30-year life of the mine its total capital investment will be \$5.41 billion. TMM also estimates the potential economic contributions of mining the copper-nickel deposits underlying its two leases could include the need for close to 12 million labor hours during the estimated three-year mine construction period and approximately 850 full-time jobs when the mine becomes operational.

Based on accepted multipliers of direct and indirect economic contribution, TMM's mining operations predicated upon its two leases might generate approximately 1,700-1,900 additional indirect jobs in the region's economy.

Conversely, across the country, counties with designated wilderness areas are associated with rapid population growth, greater employment, and enhanced personal income growth, relative to



counties lacking wilderness areas. This is attributable to the increasing mobility of service jobs, and many entrepreneurs' preference to locate their businesses in areas offering a high quality of life. Specifically, up to 150,000 visitors visit the BWCAW annually. Economic benefits generated by BWCAW-related recreation have been estimated at approximately \$44.5 million annually. The wilderness recreation-based tourism and any derivative economic return is dependent upon preserving the BWCAW's natural quality and wilderness character.

With passage of the Boundary Waters Canoe Area Wilderness Act in 1978, the business model of industries and communities associated with the BWCAW shifted. Timber production was halted. Many resorts located within the wilderness were bought out by the federal government and others received financial assistance to shift to a wilderness based business model. Gateway communities such as Ely, Tofte and Grand Marais have also shifted to wilderness based economies. While the transition has been long and often difficult these communities are now highly dependent on revenue generated by the BWCAW for economic sustainability. Potential unforeseen impacts to natural resources and water quality within the BWCAW would likely result in substantial economic impacts to established local businesses and communities now dependent upon a wilderness based business model.

On April 15, 2015, Congresswoman Betty McCollum (D-MN) introduced the National Park and Wilderness Waters Protection Act (H.R. 1796). The Act would withdraw all federal lands in the Rainy River Watershed from the mining laws, the mineral leasing laws, and the laws governing the disposal of mineral materials, subject to valid existing rights. The Act also would impose additional restrictions on the issuance of any lease or permit for mineral related activities. In a February 2, 2016, letter to the Secretaries of Agriculture and the Interior and the Director of CEQ, Congresswoman McCollum urged them "to immediately take action to protect two of America's natural treasures – the BWCAW and Voyageurs National Park." Specifically, Congresswoman McCollum requested the denial of TMM's requested lease renewals and administrative withdrawal of the Rainy River watershed.

Former Vice President—and former Minnesota Senator—Walter Mondale also has advocated that the Department of the Interior deny the renewal of TMM's leases and withdraw all federal minerals in the BWCAW's watershed. On April 1, 2016, he wrote that "Arizona has its Grand Canyon, Wyoming its Yellowstone, California, its Yosemite. These wonders come to mind unbidden as images of a place when those states are named. The Boundary Waters is such an image for Minnesota." Vice President Mondale goes on to say:

"Vice President Hubert Humphrey and I were deeply committed to protection of the Boundary Waters and its precious waters. Although we were mindful of the need for jobs, we knew that it was important to protect the magnificence of the Boundary Waters. The Twin Metals mining proposal lacks this balance. That means that today I join Minnesota's Gov. Mark Dayton and urge the federal land management agencies to continue the work of nearly 100 years and to ensure that the Boundary Waters wilderness remains the place it is today."

Then in a July 1, 2016 letter characterizing the BWCWA as pristine and irreplaceable wilderness, Vice President Mondale warned that the kind of heavy-metal mining that TMM proposes:



“...is in a destructive class all its own. Enormous amounts of unusable waste rock containing sulfides are left behind on the surface. A byproduct of this kind of mining is sulfuric acid, which often finds its way into nearby waterways. Similar mines around the country have already poisoned lakes and thousands of miles of streams. The consequence of acid mine drainage polluting the pristine Boundary Waters would be catastrophic. It is a risk we simply can't take.”

## Conclusion

The FS understands the important economic and national security benefits provided by mineral extraction and supports mining as a legitimate activity on NFS lands. However, mining is not appropriate on all places within the NFS or on every acre of NFS lands. When evaluating whether to consent to issuance of an initial lease or the lease's renewal, the FS may consider the unique ecological and cultural attributes of all NFS lands that might be adversely affected by mineral development on the leasehold along with the social and economic consequences that could flow from both a decision to consent and to withhold consent. The FS also has an affirmative responsibility to protect and maintain the character and quality of the BWCAW and MPA for present and future generations. Sec. 2, Pub. L. 95-495, 92 Stat. 1649 (1978). Thus the agency may weigh the possible benefits of TMM's potential mineral development against the possible harm TMM's potential mineral development might do to the BWCAW's uniquely valuable landscape.

TMM's potential mineral development on its two leaseholds might contribute markedly to employment and economic growth in St. Louis County, Lake County, and nearby areas. Copper-nickel mining conducted by TMM also would furnish metals important to U.S. industries and modern technology. Deposits of copper are relatively abundant in the United States and many operating copper mines in the United States are situated in arid or drier areas of the Nation where their potential for environmental harm may be reduced. The United States Geological Survey reported that as of 2015 there was only one operating nickel mine in the United States but nonetheless nickel was in oversupply and three other U.S. mining projects that would supply nickel were in development.

The BWCAW contributes to the cultural and economic sustainability of communities within the State of Minnesota, the Nation and beyond and to the ecological sustainability of unique landscapes and rare species dependent upon those landscapes that are valued within the State of Minnesota, the Nation and beyond. The BWCAW is irreplaceable, but likely irreparable in the event of its significant degradation.

Based on information provided by TMM to date (e.g., its Technical Pre-Feasibility Report), existing science, and examination of similar proposals, there is no reason to doubt that the mining operations TMM hopes to eventually conduct could result in AMD and concomitant metal leaching both during and after mineral development given the sought after copper-nickel ore is sulfidic. This fact is very significant given TMM's two leases are adjacent or proximate to the BWCAW and within the same watershed as the wilderness. It might be possible for TMM to develop a mine which employs mitigation and containment strategies that reduce the mine's potential to cause AMD and leached metals that could harm the wilderness. However, at the very least it is equally possible that available water treatment technologies would be unable to prevent the spread of any AMD and leached metals in the watershed. Further, there appears to be even

less likelihood that any contamination of the BWCAW resulting from TMM's mining operations could later be remediated, especially not in a manner compatible with the BWCAW's wilderness character. Moreover, any degree of contamination of the BWCAW by AMD and leached metals has the potential to seriously degrade the wilderness area's character and quality. Thus, even if the probability that TMM's mining operations might generate and release of AMD and leached metals was very low, which the FS does not believe to be the case, the environmental harm to the BWCAW that could result from any contamination of the area with AMD and leached metals might be extreme. Failing to prevent such damage also is contrary to Congress' determination that it is necessary to "protect the special qualities of the [BWCAW] as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and educational value to the Nation." Sec. 1, Pub. L. 95-495, 92 Stat. 1649 (1978).

Balancing what are primarily economic benefits of the mining operations that TMM hopes to conduct in connection with the renewal of its two leases against even a remote possibility of damaging the BWCAW—a unique ecosystem that Minnesota elected officials have fittingly called irreplaceable and a national treasure—makes it clear that it is incumbent upon the FS to withhold consent to the renewal of TMM's leases MNES-01352 and MNES-01353.

This decision withholding consent to the renewal of TMM's leases is subject to discretionary review by the Under Secretary for Natural Resources and Environment pursuant to 36 C.F.R. § 214.7(b), but not appeal pursuant to 36 C.F.R. part 214 (36 C.F.R. § 214.7(a)(2)). No additional information may be considered by the Under Secretary for Natural Resources and Environment in connection with the discretionary review of this decision (36 C.F.R. § 214.19(b) & (e)).

Sincerely,

A handwritten signature in cursive script that reads "Thomas L. Tidwell". The signature is written in dark ink and is positioned above the printed name and title.

THOMAS L. TIDWELL  
Chief



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Eastern States  
20 M Street, SE Suite 950  
Washington, DC 20003  
<http://www.es.blm.gov>



Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

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Sincerely,

Mitchell \_ Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest





File Code: 2670  
Date: DEC 14 2016

Neil Kornze  
Director  
Bureau of Land Management  
1849 C. Street NW, Rm. 5665  
Washington, DC 20240

Dear Director Kornze:

On June 3, 2016, the Bureau of Land Management (BLM) requested the Forest Service (FS) provide a decision on whether it consents to renewal of two leases currently held by Twin Metals Minnesota (TMM) for lands within the Superior National Forest (SNF) in northern Minnesota. These two Preference Right leases, MNES-01352 and MNES-01353, lie directly adjacent to and within three miles of the Boundary Waters Canoe Area Wilderness (BWCAW), respectively. The FS has considered the environmental conditions, nature and uses of the BWCAW by the public and tribes, economic benefits of mineral development and wilderness recreation, potential environmental consequences of mineral development on the leases, public opinion, rarity of copper-nickel sulfide ore mining in this region, and current laws and policy to inform the agency's decision.

Based on this analysis, I find unacceptable the inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same watershed as the BWCAW might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area. Therefore, the FS does not consent to renewal of Preference Right leases MNES-01352 and MNES-01353. A summary of the basis for my decision follows.

#### The BWCAW Is an Irreplaceable Resource

The 1.1 million acre the BWCAW is located in the northern third of the SNF in Minnesota, extending nearly 200 miles along the international boundary with Canada. It is the only large-scale protected sub-boreal forest in the lower 48 United States. The SNF holds 20 percent of the National Forest System's fresh water supply. These healthy forests with extremely high water quality also provide a host of watershed benefits, such as purifying water, sustaining surface water and ground water flow, maintaining fish habitats, controlling erosion, and stabilizing streambanks.

In addition to the existing high quality of the waters, the dramatic hydrogeology and interconnectedness of BWCAW's forests, lakes, streams, and wetlands make the region unique and susceptible to degradation. The BWCAW includes nearly 2,000 pristine lakes ranging in size from 10 acres to 10,000 acres, and more than 1,200 miles of canoe routes.

With Voyageurs National Park and Quetico Provincial Park, BWCAW is part of an international network of conserved land and wilderness. Quetico Provincial Park, located in Ontario, Canada,



lies within the same Rainy River watershed as the BWCAW. Quetico Provincial Park is an iconic wilderness class park, world renowned as a destination for backcountry canoeing with over 2,000 lakes and over one million acres of remote water-based wilderness. Together, Quetico and BWCAW form a core wilderness area of over two million acres.

Located northwest of the BWCAW, Voyageurs National Park was established by Congress in 1971 to preserve and interpret fur trade history and the importance of canoe travel routes in northern Minnesota. The park is at the southern edge of the boreal forest, and lies within the same Rainy River watershed as the BWCAW. It features spectacular canoeing and boating routes along with hiking trails exploring portage routes used by American Indians, early fur traders, and gold miners. Approximately 240,000 people visit Voyageurs National Park every year.

Just south of the BWCAW the Laurentian Divide separates three river systems: one flowing north to Hudson Bay; the Laurentian system flowing eastward towards the Atlantic through the Great Lakes, and the Mississippi system, flowing south to the Gulf of Mexico. TMM's two leases subject to FS decision are located in the Rainy River Watershed, which drains into the BWCAW, Quetico Provincial Park and Voyageurs National Park. There are four HUC (Hydrologic Unit Code) -10 sub-watersheds in the area of the leases and potential project site— Birch Lake, Stony River, Isabella River and Kawishiwi River. Surface water flows north and west from Birch Lake and the Kawishiwi River watershed through Kawishiwi River and several lakes into BWCAW. Water from the Stony River and the Isabella River watersheds flows into the Birch Lake watershed.

#### The BWCAW's Natural Environment

The SNF provides abundant and diverse habitat for thousands of breeding, wintering, and migratory species of terrestrial and aquatic wildlife, including over 100 species of migratory breeding birds in a zone with North America's greatest diversity of songbirds and forest-dependent warblers. The SNF also has one of the largest populations of gray wolves outside of Alaska, common loons, and moose. It has popular game species such as walleye, trout, deer, ruffed grouse, fisher, and beaver; and numerous rare species such as great gray owl, black-backed woodpecker, ram's-head ladyslipper and other orchids, and lake sturgeon. The SNF also has a great diversity and abundance of species common to the boreal forest biome, including three-toed woodpecker, boreal owl, boreal chickadee, lynx, moose, and grizzled skipper butterfly. All these species provide a wide array of crucial ecological, social and economic benefits and uses - from big game hunting and fishing to wildlife watching and research.

The BWCAW is also home to three threatened or endangered species: Canada lynx, northern long-eared bat, and gray wolf. Over the decades the BWCAW has been protected, it has provided refugia for species under stress or with declining populations, such as moose. In the face of climate change, the BWCAW may be critical to the continued existence of these species within Minnesota.

#### Cultural Resources and Treaty Rights Associated with the BWCAW

The BWCAW region has been home to Native Americans for millennia. The Minnesota Chippewa Tribe and three associated Bands – the Grand Portage Band, the Fond du Lac Band,



and the Bois Forte Band -- retain hunting, fishing, and other usufructuary rights throughout the entire northeast portion of the State of Minnesota under the 1854 Treaty of LaPointe. In the Ceded Territory all Bands have a legal interest in protecting natural resources, and the FS shares in federal trust responsibility to maintain treaty resources. Many resident Ojibwe, who ceded lands that became the BWCAW, continue to visit ancestral sites and traditional gathering and fishing locations within the wilderness. Tribes rely on natural resources like fish, wildlife and wild plants such as wild rice for subsistence and to support them spiritually, culturally, medicinally, and economically.

The northern border of the BWCAW is situated along a winding, 120-mile canoe route known locally as the Border Route, or Voyageurs Highway. This historic canoe route, bordered on the north by Ontario's Quetico Provincial Park, on the east by Grand Portage National Monument, and on the west by Voyageurs National Park, was utilized extensively by pre-contact Native Americans, European fur traders, and tribal groups such as the Dakota, Cree, and Ojibwe.

There are approximately 1,500 cultural resource sites identified on National Forest System (NFS) lands within the BWCAW. Many more cultural resources are believed to exist within the wilderness; as of 2015 only about 3 percent of the landscape has been intensively surveyed. Cultural resource sites include historic Ojibwe village sites, French and British period fur trade sites dating from 1730-1830, Woodland period village sites (2,000-500 years old) situated on wild rice lakes, Native American pictograph panel sites, Archaic period (8,000-3,000 years old) sites with copper tools, and large Paleoindian quarry sites such as those recently discovered on Knife Lake where Native Americans shaped stone tools up to 10,000 years ago.

### Wilderness Designation

The irreplaceable natural qualities of the BWCAW were recognized nearly a century ago in 1926 when the Department of Agriculture first set aside the area to preserve its primitive character. The Wilderness Act of 1964 officially designated land inside today's BWCAW as part of the National Wilderness Preservation System. The Boundary Waters Canoe Area Wilderness Act of 1978 expanded the wilderness area to 1,090,000 acres. The 1978 Act also established a separate Boundary Waters Canoe Area Mining Protection Area (MPA) to protect existing natural values and high standards of environmental quality from the adverse impacts associated with mineral development. Sec. 9, Pub. L. 95-495, 92 Stat. 1649, 1655 (1978). Congress provided very clear direction regarding the purposes of the BWCAW and MPA:

- (1) provide for the protection and management of the fish and wildlife of the wilderness so as to enhance public enjoyment and appreciation of the unique biotic resources of the region,
- (2) protect and enhance the natural values and environmental quality of the lakes, streams, shorelines and associated forest areas of the wilderness,
- (3) maintain high water quality in such areas,
- (4) minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting such areas.... Sec. 2, Pub. L. 95-495, 92 Stat. 1649 (1978).

The BWCAW Act bans authorization of federal mineral development within the BWCAW and MPA. However, the BWCAW Act does not govern federal mineral development on other NFS lands. Instead, the authorities governing federal mineral development on SNF lands outside the BWCAW and MPA are 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100. A decision withholding FS consent to the lease renewals is fully consistent with this statutory framework.

### World Renowned Research Laboratory

Because of its unique quality and character, the BWCAW is a living laboratory supporting dozens of research projects each year. Scientists of all disciplines rely on scarce areas like the BWCAW to support scientific inquiry and serve as control areas in the study of water quality, climate change effects, and natural ecological processes. The BWCAW is internationally known as a laboratory for ground-breaking research on forest fires, landscape patterns, biodiversity, wildlife, soils, nutrient cycles, other ecosystem processes, lakes, climate change, and recreational use of wilderness. This body of work is widely cited by scientists around the world. As an example, Miron Hinselman's work on forest fires in BWCAW, published during the 1970s-1990s, has been cited in more than 1,700 published studies. More recent BWCAW-related studies by Frelich and Reich have already been cited in 1,300 studies in 70 peer-reviewed science journals published in 20 countries on 4 continents. New results from BWCAW research are regularly presented at prestigious international meetings on scientific study.

### Recreation Values of the BWCAW

The BWCAW is one of the most visited areas in the entire National Wilderness Preservation System, and the System's only large lake-land wilderness. It provides an experience unique within the continental United States. The BWCAW's thousands of lakes and hundreds of miles of streams comprise about 190,000 acres (20 percent) of the BWCAW's surface area and provide for long distance travel by watercraft. The opportunity to pursue and experience expansive solitude, challenge and personal immersion in nature are integral to the BWCAW experience. Winter BWCAW visitors enjoy opportunities for skiing, dog-sledding, camping and ice fishing. Fishing is one of the most popular BWCAW activities throughout the year due to the range of species found in its waters, including smallmouth bass, northern pike, walleye, and lake trout.

### Social and Economic Environment

TMM's leases are located near Ely, in St. Louis and Lake Counties. The population of St. Louis County is concentrated in and around the City of Duluth, approximately 100 miles south of the lease area. The Iron Range communities of Ely, Hibbing, and Virginia are smaller secondary population centers. The 2010 U.S. Census shows area population has declined by nearly 10 percent since 1980, while Minnesota's population as a whole has increased by more than 30 percent. At least some of this population decline may be attributable to a loss of iron industry jobs. The Fond du Lac, Grand Portage, and Bois Forte reservations are exceptions to the regional trend - populations there have increased since 1990.

The median income of area communities is significantly lower than that of the State as a whole. It is also the case that the median income of the area's secondary population centers is generally



lower than that of St. Louis County as a whole. In some of these communities, such as Ely and Tower, the median household income is slightly more than half of the state median. In many individual communities, poverty rates are as high as or higher than statewide (with the exceptions of the secondary population centers of Hoyt Lakes, Soudan, and Tower).

Mining employment in St. Louis County declined from more than 12,000 jobs in 1980 to approximately 3,000 jobs in 2009. However, since mining employment can vary greatly from one year to the next, this decline does not represent a steady reduction. Mining-related employment is volatile and fluctuates due to changes in the market price of commodities being extracted. During the same time period, service-related employment (which includes the North American Industry Classification System categories for professional services, management, health care, education, arts/entertainment, and accommodation/food) in the study area has increased substantially, mirroring broader state and national trends.

Tourism is rooted in the region's unique recreation opportunities such as the BWCAW, and is broadly dependent on hunting, fishing, boating, sightseeing, and wilderness experiences provided by the region's high-quality natural environment. Industries associated with tourism (arts, entertainment, recreation, accommodation, and food services) account for nearly 13 percent of all employment in St. Louis County. The landscape and recreational opportunities attracts retirees and new residents.

Fishing in Minnesota lakes and rivers generates \$2.8 billion in direct annual expenditures and contributes more than \$640 million a year in tax revenues to the treasuries of the state and federal governments. The BWCAW itself has provided millions of visitors with a unique water-based recreation experience and provided an economic driver to local communities and the state of Minnesota. Leases MNES-01352 and MNES-01353 are surrounded by 29 resorts, outfitters, campgrounds and hundreds of homes and cabins. Similarly, Voyageurs National Park and Quetico Provincial Park both support vibrant tourism industries.

In 2015, 150,000 people visited the BWCAW. Economic benefits generated from recreation in the BWCAW average approximately \$44.5 million annually. Continued economic returns rely on sustaining BWCAW's natural resource quality and wilderness character.

#### The FS's Role with Respect to Hardrock Mineral Leases

TMM's two leases include a mixture of NFS lands reserved from the public domain and acquired NFS lands, with the vast majority being reserved lands. 16 U.S.C. § 508b applies to reserved NFS lands and provides in pertinent part:

"the Secretary of the Interior is authorized ... to permit the prospecting for and the development and utilization of [hard rock] mineral resources: provided, that the development and utilization of such mineral deposits shall not be permitted by the Secretary of the Interior except with the consent of the Secretary of Agriculture."

Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, applies to acquired NFS lands and provides in pertinent part:

“The functions of the Secretary of Agriculture and the Department of Agriculture with respect to the uses of mineral deposits in certain lands pursuant to ... 16 U.S.C. § 520 ... are hereby transferred to the Secretary of the Interior and shall be performed by him or ... by such officers and agencies of the Department of the Interior as he may designate: Provided, That mineral development on [lands acquired pursuant to the Weeks Act] shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes.”

In pertinent part, 16 U.S.C. § 520 provides:

The Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands acquired under the Act of March first, nineteen hundred and eleven, known as the Weeks law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States....

Under the Weeks Act, 16 U.S.C. § 515, the Secretary of Agriculture is authorized to purchase lands for the purposes of "the regulation of the flow of navigable streams or ... the production of timber."

The Department of the Interior adopted regulations providing for disposal of mineral resources pursuant to 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, by means of a leasing system governed by 43 C.F.R. part 3500. 43 C.F.R. § 3501.1(b)(1) & (3). The Department of the Interior's regulations provide that BLM's issuance of leases for hard rock minerals, including deposits of copper, nickel and associated minerals, on lands administered by another surface managing agency is "[s]ubject to the consent of the surface managing agency," 43 C.F.R. § 3503.13(a) & (c), which in the case of NFS lands is the United States Department of Agriculture, Forest Service. 16 U.S.C. § 1609(a). Specifically, 43 C.F.R. § 3503.13(a) relates to lands acquired under the Weeks Act while 43 C.F.R. § 3503.13(c) relates to the reserved lands.

On March 8, 2016, Department of Interior Solicitor Hilary Tompkins issued memorandum M-37036 (M-Opinion) in response to a BLM request asking "whether it has the discretion to grant or deny Twin Metals Minnesota's pending application for renewal of two hardrock preference right leases in northern Minnesota." The M-Opinion advises the BLM determining that, "Neither of the statutory authorities under which [MNES-01352 and MNES-01353] are issued—section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, and 16 U.S.C. § 508b—creates an entitlement to a lease or otherwise mandates the issuance of leases" and "[t]o the contrary, both authorities expressly condition leasing on surface owner consent (in this instance the Forest Service) and thus are discretionary." Therefore, on June 3, 2016, the BLM advised the Forest Service:

"[i]n light of the legal determination that the government has discretion in granting or denying the TMM lease renewal application, in accordance with 43 CFR 3503.20, 16 U.S.C. 508b, Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, and 16 USC 520, the



BLM requests that the USDA Forest Service provide, in writing, a decision on whether it consents or does not consent to the renewal of the leases."

Irrespective of the M-Opinion, the FS's consent to any hardrock lease renewal is mandated by 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099. Pursuant to 16 U.S.C. § 508b, the Secretary of Agriculture's right to consent to "the development and utilization of [hardrock] mineral resources" is coextensive with the Secretary of the Interior's authority to permit "the development and utilization of [hardrock] mineral resources." The fact that the Secretary of the Interior has implemented the authority 16 U.S.C. § 508b confers to permit "the development and utilization of [hardrock] mineral resources" by means of a regulatory scheme containing a number of decision points simply means that the Secretary of Agriculture's statutory consent authority with respect to hardrock mineral development and utilization – authority expressed in terms identical to the Department of Interior's authority – similarly extends to the same universe of decision points providing those decisions have the potential to affect NFS surface resources.

Whereas pursuant to Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, the Secretary of the Interior's authority per 16 U.S.C. § 520 "to permit the ... development ... of the [hardrock] mineral resources of the lands acquired under ... the Weeks law..." is contingent upon the Secretary of Agriculture's determination that "such development will not interfere with the primary purposes for which the land was acquired...." It is well established that mineral "development" is authorized by a lease, whether it is one issued in the first instance or a subsequent renewal. Indeed, the M-Opinion explicitly recognizes that "the entire purpose" of a mineral lease is "for the lessee to develop the minerals...." Another M-Opinion finds that since the 1970s hardrock prospecting permits for NFS lands, which are the precursor for the issuance of hardrock mineral leases including MNES-01352 and MNES-01353, have uniformly included the condition that "no mineral development of any type is authorized hereby." M-36993, Options Regarding Applications for Hardrock Mineral Prospecting Permits on Acquired Lands Near a Unit of the National Park System (1998 WL 35152797 (April 16, 1998)). *Missouri Coalition for the Environment*, 124 IBLA 211, 217 (1992) ("mineral development ... may only be authorized upon issuance of a [hardrock] lease); *John A. Nejedly Contra Costa Youth Association*, 80 IBLA 14, 26 (1984) (concurring opinion) (development under a hardrock lease "is a logically foreseen result of successful prospecting"). So again, the fact that the Secretary of the Interior has implemented the authority Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, confers to permit the development of hardrock mineral resources on lands acquired pursuant to the Weeks Act by means of a regulatory scheme containing a number of decision points simply means that the Secretary of Agriculture's consent authority with respect to hardrock mineral development – authority expressed in terms identical to Interior's authority – similarly extends to the same universe of decision points providing those decisions have the potential to affect NFS surface resources.

Of course, under Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, the Secretary of Agriculture cannot block mineral development absent a finding that "such development will ... interfere with the primary purposes for which the land was acquired...." Here, since the small percentage of acquired lands subject to TMM's two leases were purchased in accordance with the Weeks Act, those primary purposes were "the regulation of the flow of navigable streams or ... the production of timber." As discussed below, TMM hopes to construct



and operate an underground mine on its two leases – not a strip mine. At this juncture the FS consequently cannot definitively say that the mineral development which TMM hopes to conduct on its leases will interfere with those purposes. Uncertainty about this question is of little import, however, since the lands subject to TMM's leases are an admixture of lands reserved from the public domain and acquired lands with the reserved lands being in excess of 90% of the acreage included in both leases. Further, there is no reason to believe that TMM's mineral development exclusively could be confined to the acquired lands. The FS's conclusion that the agency should exercise the absolute discretion that 16 U.S.C. § 508b confers upon it to withhold consent to the renewal of TMM's leases insofar as the reserved lands are concerned accordingly has preclusive effect with respect to the lands acquired pursuant to the Weeks Act.

### The Role of Forest Plans

The FS develops land and resource management plans to provide a framework that protects renewable surface resources. This framework balances both economic and environmental considerations to provide for multiple uses and sustained yield of NFS renewable surface resources.

The 2004 SNF Plan at D-MN-1 states: "Exploration and development of mineral and mineral material resources is allowed on NFS land, except for federally owned minerals in designated wilderness and the Mining Protection Area." The Plan also provides that the FS will manage the BWCAW in a manner that perpetuates and protects its unique natural ecosystems, provides an enduring wilderness resource for future generations, and provides opportunities for a primitive and unconfined recreation experience.

Although forest plans provide a framework, they do "not authorize projects or activities or commit the Forest Service to take action" (36 C.F.R. § 219.2(b)(2)). Instead, forest plans provide broad management guidance and ensure all program elements and legal requirements are considered prior to critical project level decisions, such as a decision to authorize timber harvesting, grazing or mining operations. As the Supreme Court has determined, forest plans:

"...do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability; they create no legal rights or obligations. Thus, for example, the Plan does not give anyone a legal right to cut trees, nor does it abolish anyone's legal authority to object to trees being cut. *Ohio Forestry Ass'n. v. Sierra Club*, 523 U.S. 726, 733 (1998)."

Following Forest Plan approval, proposals are evaluated on a case-by-case basis. Proposals inconsistent with Plan direction may not be authorized (16 U.S.C. §1604(i)). However, a proposal might reveal the need to amend plan direction that would otherwise stand as an impediment to a proposal. Yet a proposal's consistency with applicable Plan standards and guidelines is not an assurance that the proposal will be authorized. The FS retains discretionary judgment concerning overall multiple use, sustained yield management of NFS lands. Further, denial of a proposal consistent with applicable Plan standards and guidelines does not require alteration of the applicable direction.



The SNF Plan does not prohibit mineral development within the management area where TMM's leases are located. But the FS is not bound to approve TMM's application for renewal of its leases either. Neither the statute nor regulations governing forest plans mandate the approval of proposals consistent with a Forest plan. Moreover, as discussed above, pursuant to the express terms of 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, the FS retains discretion to withhold consent to TMM's lease renewals given the leases' purpose is mineral development, as recognized by the M-Opinion. Specifically, the FS denial of consent to TMM's lease renewals is warranted for the reasons set out in the M-Opinion and also because the bar in both 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099, against mineral development absent the consent of the Secretary of Agriculture applies with equal force to the initial issuance of the lease and any renewal of that lease. Accordingly, the FS may consider any potential negative environmental impacts that might flow from mineral development on those leases and their effect on future national forest conditions.

#### National Environmental Policy Act (NEPA) Applicability

NEPA ensures federal agencies take into account significant environmental matters in their decision making, and that they disclose to the public that the agency has considered environmental concerns. An environmental impact statement (EIS) must be prepared when an agency proposes to undertake a major federal action that may significantly affect the quality of the human environment. In summary, NEPA tasks agencies to assess changes in the physical environment caused by the action it proposes to authorize.

Council on Environmental Quality (CEQ) regulations implementing NEPA are clear that a proposal "exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated." 40 C.F.R. § 1508.23. This provision is reinforced by CEQ's instruction that major federal actions "includes actions with effects...." 40 C.F.R. § 1508.18. FS NEPA regulations establish a four part test for determining when NEPA obligations arise, including whether "[t]he Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated...." 36 C.F.R. § 220.4(a)(1). Thus, when the FS declines to authorize a private application, the mere contemplation of that application does not constitute a federal proposal and the FS is not required to conduct an environmental analysis under NEPA.

As it is my determination not to consent to issuance of lease renewals based on the application before the agency at this time, preparation of an environmental analysis is not required. As further explained below, no significant environmental effects will occur as a result of the agency's no-consent determination.

This outcome is entirely in keeping with NEPA and its implementing regulations. Situations like this pose the unusual question of whether NEPA requires consideration of environmental effects of federal actions that foreclose development or use of natural resources. NEPA does not require a federal agency to consider effects arising from an action it has declined to allow third parties to undertake when that does not represent change in the physical environment caused by the federal



action itself. In other words, only federal actions with significant environmental effects trigger NEPA's detailed statement requirement. Actions which do nothing to alter the natural physical environment and maintain the environmental status quo are not subject to NEPA.

The FS routinely prescreens non-mineral, special use authorization applications and agency regulations direct that non-conforming uses do not need to receive further evaluation and processing. See 36 C.F.R. § 251.54(e) (2). The FS does not have regulations governing consideration of discretionary mineral leasing applications, but agency practice is consistent.

As recently as 2014, Regional Forester Atkinson rejected a request for consent to a prospecting permit on the Hiawatha National Forest without preparing a NEPA document. Diverting scarce budgetary resources to prepare NEPA documents for proposals that will not move forward trivializes NEPA and diminishes its utility in providing useful environmental analysis for actions that the agency accepts and actively evaluates for approval.

In these circumstances, the Court of Appeals' Eighth Circuit holding that a FS decision to refrain from using herbicides as a method of vegetation control is not a "proposal or action to which NEPA can apply" pertains. *Minnesota Pesticide Information and Educ., Inc. v. Espy*, 29 F.3d 442, 443 (8th Cir. 1994).

#### NFS Land Management Perspectives

Half of a century has passed since TMM's leases were issued in 1966. The original leases were issued prior to statutes such as the National Historic Preservation Act of 1966, National Environmental Policy Act of 1969, Clean Water Act of 1972, Endangered Species Act of 1973, National Forest Management Act of 1976, and Boundary Waters Canoe Area Wilderness Act of 1978. Without these laws in place the environmental consequences of potential "commercial development [of the nickel and copper deposit] by a large-scale mining operation" originally envisioned by BLM in 1956 on what are now TMM's leases received markedly less consideration in comparison with current requirements. Given changes in policy and information availability, it is not unreasonable to anticipate a higher level of interest and concern regarding these consequences than when TMM's leases were originally issued, as demonstrated in the examples to follow.

In 1991 the Minnesota Department of Natural Resources recognized the value of the BWCAW for its scenic beauty and solitude by establishing a State Mineral Management Corridor. In light of surface water flow and recreational uses, no surface disturbance or state leases may be offered in the Corridor. The State Mineral Management Corridor overlaps with federal lease MNES-1353.

The federal relationship with Native American tribes has also evolved significantly over the 50 years since the TMM leases were issued. The FS has a legal obligation to acknowledge rights of Tribes and tribal members, including off-reservation rights to hunt, fish, gather and continue cultural and spiritual practices. Such recognition did not occur until the late 1970s when Indians began to assert their rights to off-reservation resources in federal court, including those rights to fish and gather wild rice. (E.g.: *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. State of Wis.*, 653 F. Supp. 1420 (W.D. Wis. 1987) (LCO III), *Lac Courte Oreilles Band of Lake*



*Superior Chippewa Indians v. State of Wis.*, 668 F. Supp. 1233 (W.D. Wis. 1987) (LCO IV)). No documentation suggests that consultation occurred or treaty rights were considered in the 1966 decision to grant the two leases.

Finally, since the last renewal of TMM's leases in 2004, we have gained experience with copper sulfide ore mining in different parts of the country. It is clear that these types of mines pose substantial risk of failure and environmental mitigation and remediation technologies are limited, and often ineffective, as discussed later in this letter. Awareness of the environmental effects of mining, specifically those from copper-nickel mining, has increased since 2004. While economic values are important to area communities and the nation, preserving Wilderness Areas and their associated qualities also have national and local support and precedent.

#### Evaluation of the Present Lease Application

In light of the M-Opinion's legal conclusion that TMM does not have the right to automatic renewal of its leases MNES-01352 and MNES-01353, on March 8, 2016 the BLM notified TMM that the agency would review the company's lease renewal application using the same criteria that are employed in deciding whether to grant initial hardrock mineral leases. The BLM's letter also specified that as part of its consideration of TMM's lease renewal application, the BLM would ask the FS whether it consents to the leases' renewal. In response to the BLM's June 3, 2016 letter making that request of the FS, the agency began considering whether to consent to the renewal of TMM's leases based upon the agency's recognition that it has full discretion to consent or withhold consent to the renewal of TMM's two leases.

As noted above, CEQ and FS NEPA regulations make clear that an application must be accepted by the agency as a proposal before NEPA obligations are triggered. At this time, the FS will not consent to lease renewal based on the submitted application and therefore does not have a goal that it is actively pursuing to authorize such activities. For this reason, no NEPA analysis is required.

#### Acid Mine Drainage

Bedrock geochemistry in northeastern Minnesota plays a large role in the low buffering capacity of the lakes and streams in the region. Both the Minnesota Pollution Control Agency and the Environmental Protection Agency (EPA) have identified the surface waters of northeastern Minnesota as sensitive to changes in pH, acid deposition, and acid runoff. Unlike surface waters bounded by carbonate bedrock, or relatively thick carbonate rich glacial till where neutralization of acid runoff occurs through dissolution of limestone and exsolution of carbon dioxide from water, the waters of northeastern Minnesota are largely underlain by igneous and metamorphic bedrock with thin overlying soils and surficial deposits with little acid neutralization capacity.

A risk of mining development is acid mine drainage (AMD). AMD generally occurs when sulfide minerals present in ore bodies and rock overburden are exposed to air and water. The exposure to air (oxidation) and water (hydrolysis) creates sulfuric acid, which subsequently increases water pH and leaches harmful metals such as copper, zinc, lead, cadmium, iron and nickel. FS data indicates between 20,000 and 50,000 mines currently generate acid on lands managed by the agency. Negative impacts from these mines affect 8,000 to 16,000 km of



streams. While AMD can originate naturally from the ore body itself, its likelihood is dramatically increased by the generation of any mining product (stockpiles, overburden, and tailings) exposed to air and water, and can continue for decades.

Hardrock mines in sulfide bearing mineralization are known worldwide for producing AMD that requires continuous management and perpetual water treatment. Production of AMD is prevalent in all mining operation elements: construction, waste rock, tailings, and mine structures such as pits and underground workings. Acid drainage is one of the most significant potential environmental impacts at hardrock mine sites.

Water from a mine site could potentially enter streams and lakes through wastewater treatment plant discharges, uncollected runoff and leakage, concentrate spills, pipeline spills, truck accidents, spillway releases, tailings dam failures, water collection and treatment operation failures, and post-closure failures. All carry some risk to the environment. The magnitude and setting of a failure would drive the significance of the environmental risk and its potential impact.

The AMD increases lake and stream acidity, with potential risks to aquatic life including sport fisheries. A decline in water quality and aquatic species would have a negative effect on recreational visitors to the BWCAW. For example, the USGS estimated that in 2010 approximately 3,000 miles of Pennsylvania streams degraded by acid mine drainage led to approximately \$67 million in lost sport fishing revenue each year.

Mining accidents are inherently unpredictable and can result from geotechnical failures or human error. Other circumstances that can affect the likelihood of mining failures or discharges include changing metals markets, financial crises, political events, and climate change. In addition, climatic trends affecting the frequency and magnitude of storm events and seasonal temperatures could lead to unpredicted environmental changes in vegetative composition, water quality and quantity, and wildlife habitat making the environment more susceptible to damage resulting from mining operations.

There is a direct flow of water from the lands subject to TMM's leases to the BWCAW. Specifically, the leases are located within the South Kawishiwi River Watershed and the Birch Lake Watershed which both are catchments of the Rainy River Watershed. Water flows from the lands embraced by the northern lease into the South Kawishiwi River which in turn flows into Birch Lake. Water from the lands embraced by the southern lease also flows into Birch Lake and Birch Lake empties into the main Kawishiwi River and then into the BWCAW.

TMM's leases overlay the Duluth Complex known for nickel-copper-platinum group element ore deposits. Due to the inherent sulfide chemistry of this ore type, mining facilities and byproducts can produce significant amounts of acid. Consistent with the footprint and infrastructure of similar mines, as well as publically available preliminary information from TMM about this specific site, TMM's potential project area could include underground mine(s) producing mainly copper and nickel, plus smaller amounts of other metals. TMM's project would require a concentrator facility (potentially 1-2 miles west of the mine(s)), a tailing storage facility (potentially 13 miles southwest of concentrator), and connecting utility corridors. The utility corridors would include roads, rail lines, power transmission lines, natural gas pipelines, tailing



and concentrate pipelines, and water pipelines. TMM's Pre-Feasibility Study also reveals that its project would involve four delineated ore bodies – Maturi, Maturi Southwest, Birch Lake, and Spruce Road – all of which are north and east of the Laurentian Divide and thus in the watershed draining towards BWCAW.

TMM's mining operations are expected to dispose of some waste rock and tailings underground. Other waste rock and tailings would be disposed of using surface facilities. All of the waste rock and tailings derived from the sulfide ore bodies on the leases would have a high likelihood of oxidizing and becoming sources of AMD. TMM's Technical Report on Pre-Feasibility Study shows that TMM's subsurface mining operations would occur north of the Divide and present BWCAW contamination risks. That is also true of TMM's ore processing concentrator facilities. But TMM's Technical Report on Pre-Feasibility Study shows that TMM's tailings disposal facilities potentially would be south of Laurentian Divide in the Superior Watershed, which drains away from the BWCAW.

There are limitations in understanding the full contours of the mineral operations that ultimately might occur on TMM's leases, including the location of important features such as its tailings disposal facilities. The pre-feasibility study is an economic feasibility analysis, not TMM's final proposal to mine the hardrock mineral deposits. But pursuant to the terms of both 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, the FS's consent is required for hardrock mineral development and the purpose of any lease, whether it is one issued in the first instance or a subsequent renewal, is mineral development. Indeed, the M-Opinion explicitly recognizes that "the entire purpose" of a mineral lease is "for the lessee to develop the minerals...." Another M-Opinion reports that since the 1970s hardrock prospecting permits for NFS lands, which are the precursor for the issuance of Preference Right hardrock mineral leases including MNES-01352 and MNES-01353, have been issued subject to the condition that "no mineral development of any type is authorized hereby." M-36993, Options Regarding Applications for Hardrock Mineral Prospecting Permits on Acquired Lands Near A Unit Of The National Park System (1998 WL 35152797 (April 16, 1998)). *See also John A. Nejedly Contra Costa Youth Association*, 80 IBLA 14, 26 (1984) (concurring opinion) (development under a preference right lease "is a logically foreseen result of successful prospecting").

Another factor relevant to assessing the likelihood of AMD if TMM develops a mine on the lands subject to the two leases it seeks to renew is that the waters in the Rainy River watershed flow largely through bedrock fractures with limited carbonate rock surface area. Therefore the watershed has low capacity to buffer AMD.

In sum, given the hydrology and hydrogeology of this area, the likelihood of these ore bodies being exposed to water is very high, and given these particular ore bodies' composition, resulting drainage from the mine workings and mining wastes are likely to be highly acidic.

#### Lessons from Similar Copper Sulfide Mines

Contamination from mining operations can also occur instantaneously via catastrophic failure of the type that occurred in 2014 at the Mount Polley Mine in British Columbia, Canada and at other copper mines. A review of water quality impacts from 14 operating U.S. copper sulfide



mineral deposits found: 100% of the mines experienced pipeline spills or accidental releases; 13 of 14 mines' water collection and treatment systems failed to control contaminated mine seepage resulting in significant water quality impacts; tailings spills occurred at 9 operations; and a partial failure of tailing impoundments occurred at 4 mines. The inherent risks of mining hardrock mineral deposits on the lands leased to TMM set a high bar for potential mineral development within this watershed due to potentially severe consequences for the BWCAW resulting from such failures. Because of the hydrology and hydrogeology of this particular area, should contamination occur, it could cover a very broad region.

Recent reviews of similar mining proposals in Minnesota and Alaska highlight inherent risks of metal mining to natural resources, and provide examples of risks associated with long term effectiveness of planned containment strategies. In Minnesota, the Final Environmental Impact Statement for nearby NorthMet Mining Project and Land Exchange recognizes that no matter the depth of analysis and planned containment strategies there remain uncertainties associated with mine development, operation and long-term water and waste rock treatment.

Similarly, the EPA, in a Proposal Determination Pursuant to Section 404(c) of the Clean Water Act for the Pebble Mine in Alaska, warns that, "There is also real uncertainty as to whether severe accidents or failures, such as a complete wastewater treatment plant failure or a tailings dam failure, could be adequately prevented over a management horizon of centuries, or even in perpetuity, particularly in such a geographically remote area subject to climate extremes. If such events were to occur, they would have profound ecological ramifications." While the ramifications of these risks are possibly greater in the case of the Pebble Mine, due to its location, the BWCAW shares many similarities in terms of hydrogeology, extreme weather and remoteness.

#### Unique Attributes of Copper Sulfide Ore Mining in the BWCAW Region

Many operating copper mines in the United States are situated in the arid southwest or other drier areas of the Nation. Northern Minnesota has an established history of taconite mining - indeed, the region to the west of the lease sites is known as the "Iron Range." However, taconite is an iron-bearing oxide ore. Mining of the copper-nickel sulfide ore found on TMM's leases is untested in Northern Minnesota. This lack of experience with copper-nickel sulfide ore mines in environments with the complex hydrogeology of northern Minnesota complicates assessment of the consequences of mining operations on TMM's leases, which could occur if those leases are renewed.

Another variable in assessing the consequences of these operations is climate change. In Minnesota, mean annual temperatures are expected to continue rising and precipitation is expected to increase, along with the size and magnitude of weather events. An increase in precipitation and water supply in association with significant events could exacerbate the likelihood of AMD and water resource contamination. The projected changes in climate and associated impacts and vulnerabilities would have important implications for economically important timber species, forest dependent wildlife and plants, recreation, and long-range planning. The combined impacts of contaminants from mineral development and climate change could impact the ecosystem resilience of the BWCAW and the Superior National Forest outside of the wilderness.



The NorthMet Mining Project and Land Exchange, the first copper-nickel mine proposed in Minnesota, has similar concerns regarding AMD, climate change, and water quality. These concerns were addressed in NorthMet's final EIS through engineering, permitting, and monitoring requirements. Significantly, the NorthMet project is located in an area either previously disturbed and/or surrounded by brown-field taconite open pit mines and waste piles in the Laurentian Watershed, which drains away from the BWCAW. In contrast, TMM's leases are in close proximity to the BWCAW and within its high quality watershed resource of outstanding value. The inherent and legislated wilderness values and untrammelled qualities of the BWCAW contrast with the extensively disturbed surroundings of NorthMet's location. Additionally, if there is any potential for NorthMet's copper-nickel mining project to affect the BWCAW and MPA, this potential would be far less than that associated with any copper-nickel mining operations TMM might ultimately conduct.

If TMM ultimately conducts mining operations on lands subject to its two leases and they result in AMD, metal leaching, and water contamination, very few of the available containment and remediation strategies would be compatible with maintaining the BWCAW's quality and character. Available containment and remediation strategies such as sediment basins, water diversions, or construction and long-term operation of water treatment plants have the potential to deleteriously affect the BWCAW. Of particular concern, given the location of TMM's leases, is the effectiveness of available methods to counteract AMD in the case of seepage, spills, or facility failures. Water is the basic transport medium for contaminants. Consequently, all measures aimed at controlling AMD generation and migration involve controlling water flow. To reduce the generation and release of AMD, the infiltration of meteoric water (rain and snow) can be retarded through the use of sealing layers and the installation of under-drains, respectively. Diversion of contaminated water most commonly requires installation of ditches or sedimentation ponds. But even with the use of these measures successful long-term isolation of intercepted contaminated groundwater is, at best, very difficult to achieve.

Moreover, even if available remediation techniques to handle contaminated water, such as flushing, containment and evaporation, discharge through wetlands, neutralization and precipitation, desalination, water treatment plant construction and operation, utilization of ditches or sedimentation ponds, and installation of cut-off walls, trenches or wells, are effective, very few, if any, of them are compatible with maintaining the quality and character of BWCAW and MPA, as required by the Boundary Water Canoe Area Wilderness Act. Given the TMM's leases' proximity to the BWCAW's boundary (adjacent to in one case and less than 3 miles distant in the other) and the direct transport route of surface water from Birch Lake and the Kawishiwi River, it is reasonable to expect direct effects of any mining operations on those leases to the BWCAW and MPA.

#### Potential Impacts to Water, Fish, and Wildlife

As noted above, the potential for environmental harm is inherent to copper-nickel and other sulfide-bearing ore mining operations. This potential exists during all phases of mine development, mineral extraction and processing, and long-term mine closure and remediation. Expected environmental harm could encompass damage to both surface and ground water resources, including changes in water quantity, quality, and flow direction, contamination with acid and leached metals resulting from AMD and tailings disposal facility failures, and more. It



is also well established that this environmental damage can adversely affect fish populations and aquatic ecosystems directly and by indirect effects on food supplies and habitat. Recognizing this potential harm, the second edition Rainy-Lake of the Woods State of the Basin Report (2014) recommends scientifically examining the effect of new mining proposals on water quality in the Rainy River Watershed.

TMM's leaseholds lie within the Rainy River's Birch Lake Sub-Watershed (HUC 10) which the SNF has identified as a priority watershed per the FS's Watershed Condition Framework. The Framework is a comprehensive approach for: 1) evaluating the condition of watersheds, 2) strategically implementing integrated restoration, and 3) tracking and monitoring outcome based program accomplishments. According to the Watershed Restoration Action Plan for Birch Lake the watershed is currently functioning at risk, based on fair ratings for aquatic biotic condition, water quality condition, aquatic habitat condition, soil condition, and fire effects/fire regime condition. The Action Plan recognizes that further development in the watershed has the potential to move the watershed from its suboptimal level of functioning at risk to the worst level of impaired functioning.

As noted previously, the BWCAW and SNF are home to dozens of sensitive species. Three species, the Canada Lynx, gray wolf and northern long-eared bat, are listed as threatened. Crucially, the BWCAW and SNF are considered critical habitat for the threatened Canada Lynx, which requires spruce-fir boreal forest with dense understory. Canada Lynx cover large areas, traveling extensively throughout the year, meaning that development and habitat fragmentation can affect the viability of lynx populations.

The threatened northern long-eared bat lives in both Lake and St. Louis County, where TMM's leases are located. The northern long-eared bat spends its winter hibernating in caves. In summer it roosts in both live and dead trees, as well as caves. Northern long-eared bat populations are under significant stress from White-nose Syndrome, which has caused drastic declines in bat populations across the country. Increased impacts to their habitat could exacerbate population decline.

The gray wolf population in the western Great Lakes, including the BWCAW, was re-listed as threatened in 2014 by the Fish and Wildlife Service. Gray wolves also cover large areas to hunt, so wolf populations can be impacted by development and habitat fragmentation. Other animals benefit from wolves living in northern Minnesota as carcasses wolves leave behind feed many other animals.

Northern Minnesota is one of the few places in the continental U.S. where visitors can see moose. However, the state's iconic moose population continues to decline – decreasing by approximately 60 percent in the last decade, according to Minnesota's State Department of Natural Resources. Given this population decline, the U.S. Fish and Wildlife Service (FWS) initiated a status review for the U.S. population of northwestern moose (i.e., those in Michigan and Minnesota). The status review was initiated as a result of a positive 90-day finding on a petition to list moose under the Endangered Species Act. FWS determined information in the petition provided substantial scientific or commercial information indicating that species listing may be warranted.

Moose often gather around ponds, lake shores, bogs and streams where they feed on aquatic vegetation. They are under stress from climatic change, likely due to a greatly increased number of ticks brought about by warmer summers. Therefore they are ever more dependent on the extensive, high quality habitat available in the BWCAW. Additional development, such as mining activity and associated road building, in the vicinity of the BWCAW could lead to habitat fragmentation that may further stress the moose population. While contamination of BWCAW waters by acid and leached metals could lead to habitat degradation that would also add to the moose population's stress.

The potential impacts of mining activities also could affect other species dependent upon forested areas through habitat fragmentation, increased dispersal of invasive plant and animal species, and alterations to wildlife migration and residence patterns.

### Social and Economic Considerations

The State of Minnesota has primary responsibility under the Clean Water Act of 1972 to protect the water quality of the BWCAW and identifies the wilderness area as an "outstanding resource value water" under Minnesota Rules (Minn. R. 7050.0180). That section also provides that "[n]o person may cause or allow a new or expanded discharge of any sewage, industrial waste, or other waste to waters within the Boundary Waters Canoe Area Wilderness."

On March 6, 2016, Minnesota Governor Mark Dayton sent, and publicly released, a letter to TMM stating that he had directed the State's Department of Natural Resources "not to authorize or enter into any new state access or lease agreements for mining operations on those state lands" near the BWCAW. The Governor stated he has grave concerns about the use of state surface lands for mining near the BWCAW:

"[M]y concern is for the inherent risks associated with any mining operation in close proximity to the BWCAW and ... about the State of Minnesota's actively promoting advancement of such operations by permitting access to state lands."

"As you know the BWCAW is a crown jewel in Minnesota and a national treasure. It is the most visited wilderness in the eastern US, and a magnificently unique assemblage of forest and waterbodies, an extraordinary legacy of wilderness adventure, and the home to iconic species like moose and wolves. I have an obligation to ensure it is not diminished in any way. Its uniqueness and fragility require that we exercise special care when we evaluate significant land use changes in the area, and I am unwilling to take risks with that Minnesota environmental icon."

As a partner in managing and conserving natural resources within the State of Minnesota, the FS takes Governor Dayton's statements seriously. The FS shares many of the Governor's concerns. These shared concerns also support the decision to withhold consent to renewal of leases MNES-01352 and MNES-0153.

The FS was aware of negative public sentiment regarding other mineral related projects on nearby SNF lands and many people's concern about the possible renewal of leases MNES-01352 and MNES-01353. Consequently, on June 13, 2016 the FS announced it would provide a 30-day public input period commencing June 20, 2016 and including a listening session on July 13,



2016 to better understand public views about renewal of TMM's two leases. A second listening session on July 19, 2016 was subsequently announced.

Individuals and organizations expressed passionate views both in support of and opposition to renewing the leases during the input period and listening sessions. In addition, TMM submitted comments for the record during the public input period. Overall the FS received over 30,000 separate communications in response to the listening sessions. In total, this input provided FS decision makers the fullest possible understanding of public views and concerns regarding the proposed lease renewals.

Local sentiment is similarly mixed regarding the desirability of TMM developing a mine on the lands subject to its two leases. Northeastern Minnesota has a long history of mining, and much of the local economy along the Iron Range remains dependent on iron mining. Ely, Virginia, and other local communities, have a long-standing social identity associated with mining. During the two listening sessions, elected officials, union representatives, and miners expressed their concerns regarding the future of these communities, mining-associated tax revenues that support schools and local services, and high-paying jobs for future generations. These mining proponents often cited the potential economic benefits of mining, should TMM develop a mine on its leases. They also stated that young people and families are leaving the area due to a depressed local economy. Mining proponents also referred to the need for strategic metals for American industry and national defense, including their use in sustainable technologies such as wind turbines and hybrid cars.

Those who oppose TMM's development of a mine on the lands subject to its two leases emphasize the copper-nickel mining industry's history of causing serious environmental harm, the potential mine's proximity to the BWCAW, the interconnected hydrology of the leased lands and the BWCAW, and the probable negative impacts to water quality, quantity and aquatic ecosystems downstream from any mine TMM establishes. These mining opponents often stated that mining has created a boom-bust economy that only now has stabilized with the creation of sustainable recreation-based jobs reliant on an unspoiled environment. They also raised concerns about the probable negative impacts any TMM mine would have on the quality of individuals' future recreational experiences in the BWCAW, maintenance of the BWCAW's wilderness character, and preservation of the BWCAW for future generations.

In its Technical Report on Pre-Feasibility Study, TMM estimates the company's initial capital investment for mine construction will be \$2.77 billion while over the projected 30-year life of the mine its total capital investment will be \$5.41 billion. TMM also estimates the potential economic contributions of mining the copper-nickel deposits underlying its two leases could include the need for close to 12 million labor hours during the estimated three-year mine construction period and approximately 850 full-time jobs when the mine becomes operational.

Based on accepted multipliers of direct and indirect economic contribution, TMM's mining operations predicated upon its two leases might generate approximately 1,700-1,900 additional indirect jobs in the region's economy.

Conversely, across the country, counties with designated wilderness areas are associated with rapid population growth, greater employment, and enhanced personal income growth, relative to



counties lacking wilderness areas. This is attributable to the increasing mobility of service jobs, and many entrepreneurs' preference to locate their businesses in areas offering a high quality of life. Specifically, up to 150,000 visitors visit the BWCAW annually. Economic benefits generated by BWCAW-related recreation have been estimated at approximately \$44.5 million annually. The wilderness recreation-based tourism and any derivative economic return is dependent upon preserving the BWCAW's natural quality and wilderness character.

With passage of the Boundary Waters Canoe Area Wilderness Act in 1978, the business model of industries and communities associated with the BWCAW shifted. Timber production was halted. Many resorts located within the wilderness were bought out by the federal government and others received financial assistance to shift to a wilderness based business model. Gateway communities such as Ely, Tofte and Grand Marais have also shifted to wilderness based economies. While the transition has been long and often difficult these communities are now highly dependent on revenue generated by the BWCAW for economic sustainability. Potential unforeseen impacts to natural resources and water quality within the BWCAW would likely result in substantial economic impacts to established local businesses and communities now dependent upon a wilderness based business model.

On April 15, 2015, Congresswoman Betty McCollum (D-MN) introduced the National Park and Wilderness Waters Protection Act (H.R. 1796). The Act would withdraw all federal lands in the Rainy River Watershed from the mining laws, the mineral leasing laws, and the laws governing the disposal of mineral materials, subject to valid existing rights. The Act also would impose additional restrictions on the issuance of any lease or permit for mineral related activities. In a February 2, 2016, letter to the Secretaries of Agriculture and the Interior and the Director of CEQ, Congresswoman McCollum urged them "to immediately take action to protect two of America's natural treasures – the BWCAW and Voyageurs National Park." Specifically, Congresswoman McCollum requested the denial of TMM's requested lease renewals and administrative withdrawal of the Rainy River watershed.

Former Vice President—and former Minnesota Senator—Walter Mondale also has advocated that the Department of the Interior deny the renewal of TMM's leases and withdraw all federal minerals in the BWCAW's watershed. On April 1, 2016, he wrote that "Arizona has its Grand Canyon, Wyoming its Yellowstone, California, its Yosemite. These wonders come to mind unbidden as images of a place when those states are named. The Boundary Waters is such an image for Minnesota." Vice President Mondale goes on to say:

"Vice President Hubert Humphrey and I were deeply committed to protection of the Boundary Waters and its precious waters. Although we were mindful of the need for jobs, we knew that it was important to protect the magnificence of the Boundary Waters. The Twin Metals mining proposal lacks this balance. That means that today I join Minnesota's Gov. Mark Dayton and urge the federal land management agencies to continue the work of nearly 100 years and to ensure that the Boundary Waters wilderness remains the place it is today."

Then in a July 1, 2016 letter characterizing the BWCWA as pristine and irreplaceable wilderness, Vice President Mondale warned that the kind of heavy-metal mining that TMM proposes:



“...is in a destructive class all its own. Enormous amounts of unusable waste rock containing sulfides are left behind on the surface. A byproduct of this kind of mining is sulfuric acid, which often finds its way into nearby waterways. Similar mines around the country have already poisoned lakes and thousands of miles of streams. The consequence of acid mine drainage polluting the pristine Boundary Waters would be catastrophic. It is a risk we simply can't take.”

## Conclusion

The FS understands the important economic and national security benefits provided by mineral extraction and supports mining as a legitimate activity on NFS lands. However, mining is not appropriate on all places within the NFS or on every acre of NFS lands. When evaluating whether to consent to issuance of an initial lease or the lease's renewal, the FS may consider the unique ecological and cultural attributes of all NFS lands that might be adversely affected by mineral development on the leasehold along with the social and economic consequences that could flow from both a decision to consent and to withhold consent. The FS also has an affirmative responsibility to protect and maintain the character and quality of the BWCAW and MPA for present and future generations. Sec. 2, Pub. L. 95-495, 92 Stat. 1649 (1978). Thus the agency may weigh the possible benefits of TMM's potential mineral development against the possible harm TMM's potential mineral development might do to the BWCAW's uniquely valuable landscape.

TMM's potential mineral development on its two leaseholds might contribute markedly to employment and economic growth in St. Louis County, Lake County, and nearby areas. Copper-nickel mining conducted by TMM also would furnish metals important to U.S. industries and modern technology. Deposits of copper are relatively abundant in the United States and many operating copper mines in the United States are situated in arid or drier areas of the Nation where their potential for environmental harm may be reduced. The United States Geological Survey reported that as of 2015 there was only one operating nickel mine in the United States but nonetheless nickel was in oversupply and three other U.S. mining projects that would supply nickel were in development.

The BWCAW contributes to the cultural and economic sustainability of communities within the State of Minnesota, the Nation and beyond and to the ecological sustainability of unique landscapes and rare species dependent upon those landscapes that are valued within the State of Minnesota, the Nation and beyond. The BWCAW is irreplaceable, but likely irreparable in the event of its significant degradation.

Based on information provided by TMM to date (e.g., its Technical Pre-Feasibility Report), existing science, and examination of similar proposals, there is no reason to doubt that the mining operations TMM hopes to eventually conduct could result in AMD and concomitant metal leaching both during and after mineral development given the sought after copper-nickel ore is sulfidic. This fact is very significant given TMM's two leases are adjacent or proximate to the BWCAW and within the same watershed as the wilderness. It might be possible for TMM to develop a mine which employs mitigation and containment strategies that reduce the mine's potential to cause AMD and leached metals that could harm the wilderness. However, at the very least it is equally possible that available water treatment technologies would be unable to prevent the spread of any AMD and leached metals in the watershed. Further, there appears to be even

less likelihood that any contamination of the BWCAW resulting from TMM's mining operations could later be remediated, especially not in a manner compatible with the BWCAW's wilderness character. Moreover, any degree of contamination of the BWCAW by AMD and leached metals has the potential to seriously degrade the wilderness area's character and quality. Thus, even if the probability that TMM's mining operations might generate and release of AMD and leached metals was very low, which the FS does not believe to be the case, the environmental harm to the BWCAW that could result from any contamination of the area with AMD and leached metals might be extreme. Failing to prevent such damage also is contrary to Congress' determination that it is necessary to "protect the special qualities of the [BWCAW] as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and educational value to the Nation." Sec. 1, Pub. L. 95-495, 92 Stat. 1649 (1978).

Balancing what are primarily economic benefits of the mining operations that TMM hopes to conduct in connection with the renewal of its two leases against even a remote possibility of damaging the BWCAW—a unique ecosystem that Minnesota elected officials have fittingly called irreplaceable and a national treasure—makes it clear that it is incumbent upon the FS to withhold consent to the renewal of TMM's leases MNES-01352 and MNES-01353.

This decision withholding consent to the renewal of TMM's leases is subject to discretionary review by the Under Secretary for Natural Resources and Environment pursuant to 36 C.F.R. § 214.7(b), but not appeal pursuant to 36 C.F.R. part 214 (36 C.F.R. § 214.7(a)(2)). No additional information may be considered by the Under Secretary for Natural Resources and Environment in connection with the discretionary review of this decision (36 C.F.R. § 214.19(b) & (e)).

Sincerely,

A handwritten signature in cursive script that reads "Thomas L. Tidwell". The signature is written in dark ink and is positioned above the printed name and title.

THOMAS L. TIDWELL  
Chief



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.es.blm.gov>

DRAFT ATTORNEY-CLIENT PRIVILEGE—DO NOT RELEASE

Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)

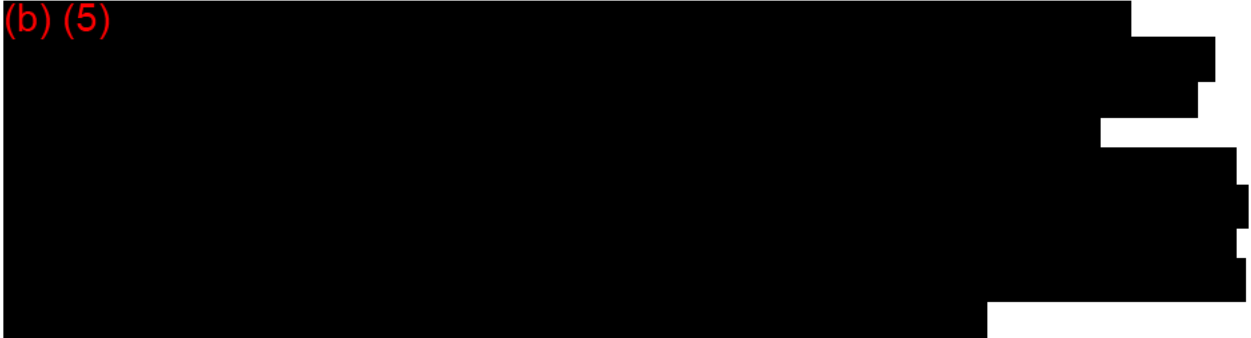
[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5)

A large rectangular area of the document is completely redacted with a solid black box. It covers the top half of the page, starting below the (b) (5) code and extending down to just above the signature line.

Sincerely,

Mitchell Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Eastern States  
20 M Street, SE Suite 950  
Washington, DC 20003  
<http://www.es.blm.gov>



DRAFT ATTORNEY-CLIENT PRIVILEGE—DO NOT RELEASE

Kathleen Atkinson  
Regional Forester  
626 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202

Dear Ms. Atkinson:

(b) (5)





(b) (5)

[REDACTED]

[REDACTED]

Commented [HJ1]: (b) (5)

[REDACTED]

Sincerely,

Mitchell Leverette  
Acting State Director  
BLM Eastern States

Attachment

cc: Ms. Brenda Halter, Forest Supervisor, Superior National Forest  
Mr. Richard Periman, Deputy Forest Supervisor, Superior National Forest

**Label: "Twin Metals/TMM FOIA  
request/SOL-2018-00089/Part 2"**

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## Conversation Contents

### Citation question in Twin Metals document

#### Attachments:

/1. Citation question in Twin Metals document/2.1 1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf  
/1. Citation question in Twin Metals document/2.2 MNES-01352 1966 Lease.pdf  
/1. Citation question in Twin Metals document/4.1 1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf  
/1. Citation question in Twin Metals document/4.2 MNES-01352 1966 Lease.pdf

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

---

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Thu Dec 07 2017 16:38:13 GMT-0700 (MST)  
**To:** "LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>  
**CC:** Briana Collier <briana.collier@sol.doi.gov>, "Mulach, Ronald - OGC" <ronald.mulach@ogc.usda.gov>  
**Subject:** Citation question in Twin Metals document

Ralph, (b) (5)

(b) (5)

(b) (5)

you. --Karen

Thank

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 07 2017 16:48:04 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** "LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>, "Mulach, Ronald - OGC" <ronald.mulach@ogc.usda.gov>  
**Subject:** Re: Citation question in Twin Metals document  
1987.02.09 memo Superior Nat'l Forest to regional forester re  
**Attachments:** INCO lease renewals (1980-2000.000522).pdf MNES-01352 1966 Lease.pdf

All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste. 1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen <karen.hawbecker@sol.doi.gov> wrote:

Ralph (b) (5)

(b) (5)

(b) (5) Thank you. --Karen

**"LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>**

---

**From:** "LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>  
**Sent:** Thu Dec 07 2017 16:51:32 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>, "HENDERSON, PAMELA P. - OGC" <PAMELA.HENDERSON@ogc.usda.gov>  
**CC:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, "Mulach, Ronald - OGC" <RONALD.MULACH@ogc.usda.gov>  
**Subject:** Re: Citation question in Twin Metals document

Ralph Linden Associate General Counsel Natural Resources and Environment Division Office of the General Counsel U.S. Department of Agriculture 202.720.6883 > On Dec 7, 2017, at 6:49 PM, Collier, Briana <briana.collier@sol.doi.gov> wrote: > > All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful. > > Briana Collier > Attorney-Adviser, Division of Mineral Resources > U.S. Department of the Interior, Office of the Solicitor > 505 Marquette Ave., NW Ste.1800 > Albuquerque, NM 87102 > > Phone: (202) 208-4853 > > > This email (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this email to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you received this email in error, please notify the sender immediately and destroy all copies. > > On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen <karen.hawbecker@sol.doi.gov> wrote: > Ralph (b) (5)

(b) (5)

(b) (5)

Thank you. --

Karen > > <1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf> > This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Thu Dec 07 2017 16:59:01 GMT-0700 (MST)  
**To:** "HENDERSON, PAMELA P. - OGC"  
<PAMELA.HENDERSON@ogc.usda.gov>  
**Subject:** Fwd: Citation question in Twin Metals document  
1987.02.09 memo Superior Nat'l Forest to regional forester re  
**Attachments:** INCO lease renewals (1980-2000.000522).pdf MNES-01352 1966  
Lease.pdf

Pamela, Here are the documents I sent over. Don't know if you received them via Ralph's CC.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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----- Forwarded message -----

**From:** Collier, Briana <briana.collier@sol.doi.gov>  
**Date:** Thu, Dec 7, 2017 at 4:48 PM  
**Subject:** Re: Citation question in Twin Metals document  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Cc:** "LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>, "Mulach, Ronald - OGC"  
<ronald.mulach@ogc.usda.gov>

All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen <karen.hawbecker@sol.doi.gov> wrote:

Ralph (b) (5)

(b) (5)

(b) (5) Thank you. --Karen

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 08:32:51 GMT-0700 (MST)  
"LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>, "HENDERSON, PAMELA P. - OGC" <PAMELA.HENDERSON@ogc.usda.gov>, "Mulach, Ronald - OGC" <RONALD.MULACH@ogc.usda.gov>  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**CC:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Citation question in Twin Metals document

Hi all,

For footnote 18, we would like to go with a simple citation to both documents as follows:

(b) (5)

Any objections?

Thanks very much,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

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On Thu, Dec 7, 2017 at 4:51 PM, LINDEN, RALPH - OGC <RALPH.LINDEN@ogc.usda.gov> wrote:

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883

> On Dec 7, 2017, at 6:49 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
>  
> All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful.  
>  
> Briana Collier  
> Attorney-Adviser, Division of Mineral Resources  
> U.S. Department of the Interior, Office of the Solicitor  
> 505 Marquette Ave., NW Ste.1800  
> Albuquerque, NM 87102  
>  
> Phone: (202) 208-4853  
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>  
> On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)><<mailto:karen.hawbecker@sol.doi.gov>>> wrote:  
> Ralph (b) (5)  
(b) (5)  
(b) (5)  
(b) (5) Thank you. --Karen  
>  
> <1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf>  
> <MNES-01352 1966 Lease.pdf>

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**"LINDEN, RALPH - OGC" <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)>**

---

**From:** "LINDEN, RALPH - OGC" <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)>  
**Sent:** Fri Dec 08 2017 08:35:02 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
"HENDERSON, PAMELA P. - OGC"  
<[PAMELA.HENDERSON@ogc.usda.gov](mailto:PAMELA.HENDERSON@ogc.usda.gov)>, "Mulach, Ronald - OGC" <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>, "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer  
**CC:**

<richard.mcneer@sol.doi.gov>

**Subject:**

Re: Citation question in Twin Metals document

Unless Pamela says no, fine with me.

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883

On Dec 8, 2017, at 10:33 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Hi all,

For footnote 18, we would like to go with a simple citation to both documents as follows:

(b) (5)

Any objections?

Thanks very much,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Thu, Dec 7, 2017 at 4:51 PM, LINDEN, RALPH - OGC  
<[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)> wrote:

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883



> On Dec 7, 2017, at 6:49 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
>  
> All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful.  
>  
> Briana Collier  
> Attorney-Adviser, Division of Mineral Resources  
> U.S. Department of the Interior, Office of the Solicitor  
> 505 Marquette Ave., NW Ste.1800  
> Albuquerque, NM 87102  
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> Phone: (202) 208-4853  
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>  
> On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)<<mailto:karen.hawbecker@sol.doi.gov>>> wrote:  
> Ralph (b) (5)  
> (b) (5)  
> (b) (5)  
> (b) (5) Thank you. --Karen  
>  
> <1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf>  
> <MNES-01352 1966 Lease.pdf>

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**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

---

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 08:43:08 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard

**CC:** McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Fwd: Citation question in Twin Metals document

Ralph Linden's response is below.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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From: **LINDEN, RALPH - OGC** <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)>  
Date: Fri, Dec 8, 2017 at 8:35 AM  
Subject: Re: Citation question in Twin Metals document  
To: "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
Cc: "HENDERSON, PAMELA P. - OGC" <[PAMELA.HENDERSON@ogc.usda.gov](mailto:PAMELA.HENDERSON@ogc.usda.gov)>, "Mulach, Ronald - OGC" <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>, "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

Unless Pamela says no, fine with me.

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883

On Dec 8, 2017, at 10:33 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Hi all,

For footnote 18, we would like to go with a simple citation to both documents as follows:

(b) (5)

Any objections?

Thanks very much,  
Briana



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On Thu, Dec 7, 2017 at 4:51 PM, LINDEN, RALPH - OGC

<[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)> wrote:

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883

> On Dec 7, 2017, at 6:49 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

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> All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful.

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> Briana Collier

> Attorney-Adviser, Division of Mineral Resources

> U.S. Department of the Interior, Office of the Solicitor

> 505 Marquette Ave., NW Ste 1800

> Albuquerque, NM 87102

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>

> On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen

<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)<<mailto:karen.hawbecker@sol.doi.gov>>> wrote:

> Ralph (b) (5)

(b) (5)

(b) (5)

(b) (5)

Thank you. --Karen

>

> <1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf>

> <MNES-01352 1966 Lease.pdf>

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**"HENDERSON, PAMELA P. - OGC" <PAMELA.HENDERSON@ogc.usda.gov>**

**From:** "HENDERSON, PAMELA P. - OGC"  
<PAMELA.HENDERSON@ogc.usda.gov>  
**Sent:** Fri Dec 08 2017 09:41:30 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>, "LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>, "Mulach, Ronald - OGC" <RONALD.MULACH@ogc.usda.gov>  
**CC:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** RE: Citation question in Twin Metals document

(b) (5)

Senior Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
1400 Independence Ave S.W. Room 3338-S  
Washington, DC 20250-1400  
☎ 202-720-2515 (Voice)  
☎ 844-354-1119 (Fax)  
✉ [Pamela.Henderson@ogc.usda.gov](mailto:Pamela.Henderson@ogc.usda.gov)

**From:** Collier, Briana [mailto:[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)]  
**Sent:** Friday, December 8, 2017 10:33 AM  
**To:** LINDEN, RALPH - OGC <RALPH.LINDEN@OGC.USDA.GOV>; HENDERSON, PAMELA P. - OGC <PAMELA.HENDERSON@OGC.USDA.GOV>; Mulach, Ronald - OGC <RONALD.MULACH@OGC.USDA.GOV>  
**Cc:** Hawbecker, Karen <karen.hawbecker@sol.doi.gov>; Richard McNeer

<richard.mcneer@sol.doi.gov>

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Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
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U.S. Department of Agriculture  
202.720.6883

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<karen.hawbecker@sol.doi.gov<mailto:karen.hawbecker@sol.doi.gov>> wrote:

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(b) (5)

(b) (5)

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**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 09:52:20 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Fwd: Citation question in Twin Metals document

Jack, Here is Pamela's response on footnote 18.

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From: **HENDERSON, PAMELA P. - OGC** <PAMELA.HENDERSON@ogc.usda.gov>

Date: Fri, Dec 8, 2017 at 9:41 AM

Subject: RE: Citation question in Twin Metals document

To: "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, "LINDEN, RALPH - OGC" <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)>, "Mulach, Ronald - OGC" <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>

Cc: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

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☎ 202-720-2515 (Voice)  
☎ 844-354-1119 (Fax)  
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**From:** Collier, Briana [<mailto:briana.collier@sol.doi.gov>]

**Sent:** Friday, December 8, 2017 10:33 AM

**To:** LINDEN, RALPH - OGC <[RALPH.LINDEN@OGC.USDA.GOV](mailto:RALPH.LINDEN@OGC.USDA.GOV)>; HENDERSON, PAMELA P. - OGC <[PAMELA.HENDERSON@OGC.USDA.GOV](mailto:PAMELA.HENDERSON@OGC.USDA.GOV)>; Mulach, Ronald - OGC <[RONALD.MULACH@OGC.USDA.GOV](mailto:RONALD.MULACH@OGC.USDA.GOV)>

**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

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On Thu, Dec 7, 2017 at 4:51 PM, LINDEN, RALPH - OGC <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)> wrote:

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883

> On Dec 7, 2017, at 6:49 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

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**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 10:03:50 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Citation question in Twin Metals document

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**From:** HENDERSON, PAMELA P. - OGC <PAMELA.HENDERSON@ogc.usda.gov>  
**Date:** Fri, Dec 8, 2017 at 9:41 AM  
**Subject:** RE: Citation question in Twin Metals document  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>, "LINDEN, RALPH - OGC" <RALPH.LINDEN@ogc.usda.gov>, "Mulach, Ronald - OGC" <RONALD.MULACH@ogc.usda.gov>  
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(b) (5)

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✉ [Pamela.Henderson@ogc.usda.gov](mailto:Pamela.Henderson@ogc.usda.gov)

**From:** Collier, Briana [mailto:[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)]  
**Sent:** Friday, December 8, 2017 10:33 AM  
**To:** LINDEN, RALPH - OGC <[RALPH.LINDEN@OGC.USDA.GOV](mailto:RALPH.LINDEN@OGC.USDA.GOV)>; HENDERSON, PAMELA P. - OGC <[PAMELA.HENDERSON@OGC.USDA.GOV](mailto:PAMELA.HENDERSON@OGC.USDA.GOV)>; Mulach, Ronald - OGC <[RONALD.MULACH@OGC.USDA.GOV](mailto:RONALD.MULACH@OGC.USDA.GOV)>  
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**"McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>**

---

**From:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 10:04:49 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**CC:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Citation question in Twin Metals document

Jack:

Agreed.

Richard

On Fri, Dec 8, 2017 at 12:03 PM, Haugrud, Kevin <jack.haugrud@sol.doi.gov> wrote:

(b) (5)

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To: "Collier, Briana" <briana.collier@sol.doi.gov>, "LINDEN, RALPH - OGC"

<RALPH.LINDEN@ogc.usda.gov>, "Mulach, Ronald - OGC"

<RONALD.MULACH@ogc.usda.gov>

Cc: "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>, Richard McNeer

<richard.mcneer@sol.doi.gov>

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Senior Counsel  
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☎ 844-354-1119 (Fax)  
✉ [Pamela.Henderson@ogc.usda.gov](mailto:Pamela.Henderson@ogc.usda.gov)

From: Collier, Briana [mailto:[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)]

Sent: Friday, December 8, 2017 10:33 AM

To: LINDEN, RALPH - OGC <RALPH.LINDEN@OGC.USDA.GOV>; HENDERSON, PAMELA P. - OGC <PAMELA.HENDERSON@OGC.USDA.GOV>; Mulach, Ronald - OGC <RONALD.MULACH@OGC.USDA.GOV>

**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Subject:** Re: Citation question in Twin Metals document

Hi all,

For footnote 18, we would like to go with a simple citation to both documents as follows:

(b) (5)

Any objections?

Thanks very much,  
Briana

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste. 1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Thu, Dec 7, 2017 at 4:51 PM, LINDEN, RALPH - OGC <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)> wrote:

Ralph Linden  
Associate General Counsel  
Natural Resources and Environment Division  
Office of the General Counsel  
U.S. Department of Agriculture  
202.720.6883

> On Dec 7, 2017, at 6:49 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
>  
> All, Here is the 2/6/87 letter and a copy of one of the 1966 leases, in case that is helpful.  
>  
> Briana Collier  
> Attorney-Adviser, Division of Mineral Resources  
> U.S. Department of the Interior, Office of the Solicitor  
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> On Thu, Dec 7, 2017 at 4:38 PM, Hawbecker, Karen <karen.hawbecker@sol.doi.gov<mailto:karen.hawbecker@sol.doi.gov>> wrote:

> Ralph, (b) (5)

(b) (5)

(b) (5)

Thank you. --

Karen

>

> <1987.02.09 memo Superior Nat'l Forest to regional forester re INCO lease renewals (1980-2000.000522).pdf>

> <MNES-01352 1966 Lease.pdf>

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---

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 10:51:45 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Citation question in Twin Metals document

Ufda. I don't think our language was incorrect, but the changes are fine too.

On Fri, Dec 8, 2017 at 12:04 PM, McNeer, Richard <richard.mcneer@sol.doi.gov> wrote:

Jack:

Agreed.

Richard

On Fri, Dec 8, 2017 at 12:03 PM, Haugrud, Kevin <jack.haugrud@sol.doi.gov> wrote:

(b) (5)

On Fri, Dec 8, 2017 at 11:52 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Jack, Here is Pamela's response on footnote 18.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

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----- Forwarded message -----

From: **HENDERSON, PAMELA P. - OGC** <[PAMELA.HENDERSON@ogc.usda.gov](mailto:PAMELA.HENDERSON@ogc.usda.gov)>

Date: Fri, Dec 8, 2017 at 9:41 AM

Subject: RE: Citation question in Twin Metals document

To: "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>, "LINDEN, RALPH - OGC" <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)>, "Mulach, Ronald - OGC" <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>

Cc: "Hawbecker, Karen" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>

(b) (5)

Senior Counsel  
Natural Resources and Environment Division  
*Office of the General Counsel*  
U.S. Department of Agriculture  
1400 Independence Ave S.W. Room 3338-S  
Washington, DC 20250-1400  
☎ 202-720-2515 (Voice)  
☎ 844-354-1119 (Fax)  
✉ [Pamela.Henderson@ogc.usda.gov](mailto:Pamela.Henderson@ogc.usda.gov)

**From:** Collier, Briana [mailto:[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)]

**Sent:** Friday, December 8, 2017 10:33 AM

**To:** LINDEN, RALPH - OGC <[RALPH.LINDEN@OGC.USDA.GOV](mailto:RALPH.LINDEN@OGC.USDA.GOV)>; HENDERSON, PAMELA P. - OGC <[PAMELA.HENDERSON@OGC.USDA.GOV](mailto:PAMELA.HENDERSON@OGC.USDA.GOV)>; Mulach, Ronald - OGC <[RONALD.MULACH@OGC.USDA.GOV](mailto:RONALD.MULACH@OGC.USDA.GOV)>

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UNITED STATES  
DEPARTMENT OF  
AGRICULTURE

FOREST  
SERVICE

Superior  
National  
Forest

515 West 1st Street  
P.O. Box 338  
Duluth, MN 55801

Reply to: 2820

Date: February 9, 1987

Subject: INCO Lease Renewals

To: Regional Forester

Enclosed is a finding of categorical exclusion for my decision to proceed with the extension of Bureau of Land Management mineral leases ES 01352 and ES 01353. Usually this document would be signed by you, but in this case the leases designate me as authorizing officer. The activities authorized by these leases can be conducted in conformance with the management direction found in the Forest Plan.

*Clay G. Beal*

CLAY G. BEAL  
Forest Supervisor

Enclosure

BUREAU OF LAND MANAGEMENT  
DIVISION OF SOLID MINERALS  
VV MAR 07 1989  
ROLLA, MISSOURI 65401





FINDING OF CATEGORICAL EXCLUSION

CONDITIONS OF EXTENDING BUREAU OF LAND MANAGEMENT LEASES

Lake and St. Louis Counties, Minnesota  
Superior National Forest  
Kawishiwi Ranger District

I have decided that the terms and conditions of Bureau of Land Management (BLM) leases ES 01352 and ES 01353 are adequate to prevent or mitigate unacceptable impacts and that no additional conditions need to be added prior to their renewal provided that none of the terms and conditions related to my authority are diminished in any manner.

These leases include approximately 4,945 acres of Federal minerals located in T61N, R11W; T62N, R11W; and T62N, R10W of Lake and St. Louis Counties, Minnesota.

Public comments were solicited by publishing notices in local news papers, by radio interviews, and by contacting individuals. There were five responses to the public involvement. Four respondents asked for additional information. After the information was sent, they did not comment further. The fifth respondent was against issuing the leases based on general principals and also claimed tribal ownership of minerals in the lease area. The respondent was informed that we are not deciding if the leases should be issued but instead are deciding if new restrictions need to be added before extending them and that the question of tribal ownership of minerals goes far beyond the scope of this analysis. A copy of the lease and other information was also sent to the respondent but again no additional comments were received.

The only significant concern identified by the Forest Service was that the lease does not specifically require INCO to comply with certain laws and regulations. I have decided that Section 13 which requires my approval of an operating plan plus the requirement in subsection 3 (J) that the lessee comply with regulations of the Secretaries of Agriculture and Interior and with applicable Federal and State laws gives me the broad authority needed to require compliance with applicable laws and regulations even though they are not specifically listed in the lease.

These leases have been in effect for 20 years and past experience has shown that their terms and conditions provide adequate authority to prevent or mitigate unacceptable impacts. During this time the area has been extensively explored, hundreds of test holes have been drilled, both surface and underground bulk samples have been taken, and a large scale open pit mining operation proposed and evaluated. At no time were the terms and conditions of the leases found to be inadequate.

Implementation of this decision will take place immediately. This decision is subject to administrative review pursuant to 36 CFR 211.18.

*Clay G. Beal*

CLAY G. BEAL  
Forest Supervisor

2-6-87  
DATE



FINDING OF NO SIGNIFICANT IMPACT / DECISION RECORD

Preference Right Lease Numbers: MNES 1352, MNES 1353

Proposed Action: Lease renewals, Superior National Forest

State: Minnesota; County: Lake, St. Louis; Acreage: 4,864.78

Background: The Superior National Forest has completed the attached "Finding of Categorical Exclusion", which analyzes the above proposed action. The Superior National Forest Supervisor signed this document on February 6, 1987, indicating that "the terms and conditions of Bureau of Land Management (BLM) leases ES 01352 and ES 01353 are adequate to prevent or mitigate unacceptable impacts and that no additional conditions need to be added prior to their renewal provided that none of the terms and conditions related to my authority are diminished in any manner." This analysis adequately addresses impacts associated with hardrock mineral lease renewals, and this proposal is within the scope of analysis covered by this document. The Forest Service consented to renewal of this lease via a letter submitted to the Eastern States Office of BLM dated June 19, 1987, with a letter of clarification following on March 24, 1988. The consent requires that the existing terms and conditions affecting surface uses be attached to the renewed leases.

Environmental Considerations: I have reviewed the above-referenced document and have considered the environmental consequences of this proposal. All environmental considerations have been adequately addressed in the above-referenced document.

Finding of No Significant Impact: Based on the analysis in the referenced environmental document, this decision will not result in any significant impacts to the environment, therefore an environmental impact statement is not required.

Vernant Vegt  
Assistant District Manager for Solid Minerals

3/7/89  
Date

Decision: It is my decision to approve the proposed action, subject to existing lease terms and conditions.

Rationale: The decision to renew this lease will not result in any undue or unnecessary environmental degradation.

\_\_\_\_\_  
District Manager, Milwaukee

\_\_\_\_\_  
Date

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

MINERAL LEASE

This lease entered into on the 1st day of June, 1966 between the United States of America, as Lessor, through the Bureau of Land Management, and The International Nickel Company, Inc., a Delaware corporation with offices at 67 Wall Street, New York, New York, as Lessee, pursuant to the authority set out in, and subject to, Section 402 of the President's Reorganization Plan No. 3 of 1946, 60 Stat. 1099, and the Act of June 30, 1950, 64 Stat. 311, and to all regulations of the Secretary of the Interior now in force when not inconsistent with any of the provisions herein.

WITNESSETH:

Sec. 1. (a) Rights of Lessee. In consideration of the rents and royalties to be paid and conditions and covenants to be observed as herein set forth the Lessor grants to the Lessee, subject to all privileges and uses heretofore duly authorized and prior valid claims, the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals and, with the exception of oil, gas, oil shale, coal, phosphate, potassium, sodium, or sulphur, any other minerals in, upon, or under the following described lands in the United States, in the State of Minnesota:

In Lake County:

Township 61 North, Range 11 West of the Fourth Principal Meridian:

Section 3, Lot 2  
SW-1/4 of SW-1/4  
S-1/2 of SE-1/4  
Section 5, Lots 1 and 2  
S-1/2 of NE-1/4  
Lot 6  
Lot 7  
NE-1/4 of SW-1/4  
S-1/2 of SW-1/4  
N-1/2 of SE-1/4

Section 6, Lots 13, 22, 23 and 24  
Section 7, Lots 1, 2, 3, 4, 9, 10, 12, 15, 16 and 19  
Section 8, Lots 2 and 6  
Section 9, All except W-1/2 of NW-1/4  
Section 18, Lots 2, 7, 9, 12, 13, 14, 15, 16, 17, 18  
19 and 20

Section 19, Lots 2, 3, 4, 5, 7 and 8

Township 62 North, Range 11 West of the Fourth Principal Meridian:

Section 27, SE-1/4 of SW-1/4  
Section 32, Lot 4  
Section 33, Lots 6 and 7  
Section 34, NW-1/4

In St. Louis County:

Township 61 North, Range 12 West of the Fourth Principal Meridian:

Section 25, Lot 2  
SW-1/4 of SW-1/4

containing ~~2,569.87~~ acres, more or less, together with the right

2,610.07

SEE DECISION 9-1-66

to construct and maintain thereon such structures and other facilities as may be necessary or convenient for the mining, preparation, and removal of said minerals, for a period of twenty (20) years with a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 CFR § 3221.4(f) and the provisions of this lease.

(b) Authorized Agency Representative. The United States agency having administrative control over the surface use of the land is the Department of Agriculture and its authorized agency representative, hereinafter called the "Authorized Officer," to whom inquiries should be addressed is the Supervisor, Superior National Forest at Duluth, Minnesota.

Sec. 2. In consideration of the foregoing, the Lessee agrees:

(a) Rentals. To pay to the Lessor annually in advance, beginning with the date of this lease, rental of one dollar (\$1.00) for each acre or fraction thereof for each lease year until production commences, the rental payment for the year in which production commences to be credited on royalties that accrue during that lease year.

(b) Royalty. To pay the Lessor within 30 days after the end of each period prescribed in subsection (e) of this section a royalty (i) at the rate of 4% during the first ten years of the primary term and (ii) at the rate of 4-1/2% during the second 10 years of the primary term, of the gross value of the minerals mined hereunder which are shipped to the concentrating mill during each such period. Said value for the purposes of this Agreement shall be taken to be one-third of the market prices of a quantity of fully-refined copper and of a quantity of fully-refined nickel equal to the respective quantities of unrefined copper and unrefined nickel contained in said minerals so shipped to the concentrating mill.

(c) Minimum royalty. Beginning after the tenth year of the lease, except with respect to any periods during which operations are interrupted by strikes, the elements or casualties not attributable to the Lessee, to mine each year from the area covered by the lease a quantity of the leased minerals such that the royalties payable for said year under subsections (b) and (d) hereof will during the primary term of the lease be at least equal to \$5 per annum per acre included in the leased premises at the beginning of such year, and during each renewal period of the lease be at least equal to \$10 per annum per acre included in the leased premises at the beginning of such year; or in lieu thereof to pay the Lessor as royalty within 30 days after the end of such year that amount which, when added to the royalties, if any, payable for said year under subsections (b) and (d) hereof, will equal the minimum royalty for that year herein provided. Lessor may in its discretion, waive, reduce, or suspend the minimum royalty payment for reasonable periods of time in the interest of conservation or when such action does not adversely affect the interest of the United States of America in accordance with the regulation 43 CFR § 3222.6-2.

(d) Additional royalty. (1) In order to provide a royalty in respect of any associated products (as hereinafter defined), to pay the Lessor within 30 days after the end of each period prescribed in subsection (e) of this section an additional royalty of 0.3% of the gross value of the minerals mined under this lease (determined on the basis of their copper and nickel content as provided in subsection (b) of this section) which are shipped to the concentrating mill during such

period. During the first ten years of the lease such additional royalty shall not be payable if the Lessee demonstrates that no associated products are being recovered from the minerals mined under this lease, but beginning after the tenth year of the lease, such additional royalty shall be payable whether or not associated products are recovered from the minerals mined under this lease.

(2) The Lessee will also pay the Lessor within 90 days after the end of each lease year a further additional royalty of 1% of the amount, if any, by which the gross value of associated products exceeds 20% of the aggregate market price as fully-refined metals of the quantity of copper and nickel contained in the minerals mined under this lease which are shipped to the concentrating mill during such lease year. At the request of either party following any lease year for which said 1% royalty has been payable and the gross value of associated products exceeds 30% of the said aggregate market price, representatives of the Lessor and the Lessee shall meet at a mutually agreeable time to consider and decide whether additional royalty for associated products shall continue to be payable as provided in this subsection (d), or shall (in lieu thereof) be payable on such basis as may be negotiated. In connection with such meeting the Lessee will make a reasonable investigation to ascertain insofar as practicable the volume of associated products which appear to be currently recovered from the minerals mined under this lease, and will provide the Lessor with the results of this investigation.

(3) For purposes of this agreement, the term "associated products" shall mean (i) fully-refined chemical elements (other than copper and nickel) not further processed and (ii) end products containing such elements produced by the Lessee (prior to full refining) for their value as such (other than products valuable chiefly by reason of their copper and/or nickel content), which are, in either case, recovered by the Lessee from minerals mined under this lease and sold or used by the Lessee during the lease year for which additional royalty, if any, is due; and the gross value of such products shall be taken to be the aggregate of the market prices of the respective quantities of associated products so sold or used by the Lessee.

(e) Statement. To furnish for each month or such longer period as may be prescribed by the Regional Mining Supervisor of the Geological Survey, statements in detail in such form as may be prescribed by him, of the amount and value under subsection (b) of this section of the minerals mined hereunder which are shipped to the concentrating mill during such period, for use in determining royalties, such statements to be furnished within 30 days from the close of such period. Falsification of such statements shall be grounds for cancellation of the lease.

(f) Market prices. For the purposes of this section the "market price of fully-refined copper" per pound shall be the average of the monthly average prices per pound for Domestic Refinery Electrolytic Copper in carload lots, f.o.b. Atlantic Seaboard refineries, published in E. & M. J. Metal and Mineral Markets for the period for which the royalty is being computed, and the "market price of fully-refined nickel" per pound shall be the average of the monthly average prices per pound for nickel (i.e., electrolytic nickel cathodes) in carload lots, f.o.b. Port Colborne, Ontario, Canada, United States import duty (if any) included, published in E. & M. J. Metal and Mineral Markets for the period for which royalty is being computed; and the respective "market prices of associated products" per unit

shall be the average of the monthly average prices per unit for such respective products in their usual and customary shipping quantities, f.o.b. their usual and customary place of disposal, published in E. & M. J. Metal and Mineral Markets for the period for which additional royalty, if any, is being computed.

(g) Bond. To furnish and maintain a bond in the sum of \$ 10,000.00 conditioned upon compliance with the terms and conditions of this lease, and to increase the amount thereof or furnish such other bond as may be required.

(h) Inspection. To permit at all reasonable times: (1) inspection by any authorized officer of the leased premises and all surface and underground improvements, works, machinery, equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and (2) the Lessor to make copies of and extracts from any or all books and records pertaining to operations under this lease.

(i) Maps--Reports. To furnish, in duplicate, to the Regional Mining Supervisor, at such times as he may require, a plat in the manner and form prescribed by him showing prospecting and development work and improvements on the leased land and other related information, with a report as to all buildings, structures, and other works or equipment, situated elsewhere and owned or operated in conjunction with, or as a part of the operations conducted hereunder.

(j) To comply with all regulations of the Secretary of the Interior and the Secretary of Agriculture applicable to the leased premises which are under his jurisdiction; and to conduct operations in an orderly manner and in accordance with regulations in 30 CFR, Part 2250, and the applicable Federal and State laws; and to exercise reasonable diligence, skill, and care in the operation of the property; and to carry on all operations in accordance with approved methods and practices, having due regard for the prevention of damage to mineral deposits, water horizons and property, injury to life and health, and economic waste.

(k) Taxes. To pay when due all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, output of mines, and other rights, property, and assets of the Lessee.

(l) Deliver Premises. To deliver up to the Lessor in good order and condition and subject to the provisions of Section 9 hereof on the termination of this lease as a result of forfeiture thereof the lands covered thereby, including all underground timbering and such other supports and structures as are necessary for the preservation of the mine.

(m) Assignment. Not to assign this lease, or any interest therein, whether by direct assignment, operating agreement, working or royalty interest, or otherwise, nor sublet any portion of the leased premises, except with the approval in writing of the Lessor. All such assignments or subleases must be submitted in triplicate within 90 days from the date of execution and must contain all of the terms and conditions agreed upon by the parties thereto. Not to create overriding royalties in excess of those authorized by regulation 43 CFR § 3226.1.

An assignment of all or part of the record title to a portion of the acreage in the lease shall separate the lease into separate leaseholds and the terms hereof shall apply

7-11-46  
for memo  
Reg. Sec.  
Mining  
Staff (1226)  
7-11-46

separately to the segregated portions. Advance annual rental payments, if previously terminated, shall be resumed as to an undeveloped segregated portion on the next anniversary date of the lease; the minimum royalty payment herein specified shall apply separately to the segregated portions and the time allowed within which to commence operations on an undeveloped segregated portion shall be such reasonable period as shall be prescribed by the Lessor at the time the assignment is approved.

(n) Nondiscrimination Clauses. In connection with the performance of work under this contract, the Lessee agrees as follows:

(1) The Lessee will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the authorized contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Lessee will, in all solicitations or advertisements for employees placed by or on behalf of the Lessee state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The Lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the Lessee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Lessee will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The Lessee will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as

otherwise provided by law.

(7) The Lessee will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Lessee will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Lessee becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

(o) Payments. Rentals under this lease shall be paid to the Manager of the proper Land Office, except that when this lease becomes productive the rentals and royalties shall be paid to the Regional Mining Supervisor of the United States Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 3. Lessee further agrees:

(a) Protection of Property. To conduct all operations hereunder with due regard for good land management, not to cut or destroy timber without previous permission from the Authorized Officer and to pay for such timber at rates prescribed by him; to avoid damage to improvements, timber, crops, or other cover; unless otherwise authorized by the Authorized Officer, not drill any well, carry on operations, make excavations, construct tunnels, drill, or otherwise disturb the surface of the lands within 200 feet of any building thereon and whenever required in writing by the Authorized Officer, and upon any partial or total relinquishment, cancellation or termination of this lease as to that portion of the land to which his rights have terminated, to fence or fill all sump holes, ditches and other excavations, remove or cover all debris, and so far as reasonably possible, reseed or otherwise restore the surface of the lands to their former condition, or to a productive or other condition satisfactory to the Authorized Officer, including the removal of structures as and if required, and when required by such Officer to bury all pipelines below plow depth.

(b) Fire precautions. To do all in his power to prevent and suppress fires on the land and vicinity, and to require his employees, contractors, and subcontractors to do likewise. Unless prevented by circumstances over which he has no control, to place his employees, contractors, and subcontractors at the disposal of the Authorized Officer for the purpose of fighting fires on or originating on the land or on adjacent areas or caused by the negligence of the Lessee or his employees, contractors, and subcontractors, with the understanding that payment for such services shall be made at rates to be determined by such Authorized Officer but not less than the current rates of pay prevailing in the vicinity for services of a similar character: Provided, that if the



Lessee, his employees, contractors, or subcontractors, or employees of any of them, caused or could have prevented the origin or spread of said fire or fires, no payment shall be made for services so rendered. During periods of serious fire danger, as may be specified by the Authorized Officer, the Lessee shall prohibit smoking and the building of camp and lunch fires by his employees, contractors, and subcontractors, within the leased area except at established camps, and shall enforce this prohibition by all means within his power: Provided, that the Authorized Officer may designate safe places where, after all inflammable material has been cleared away, campfires may be built for the purpose of heating lunches and where, at the option of the Lessee, smoking may be permitted. The Lessee will not burn rubbish, trash, or other inflammable materials except with the consent of the Authorized Officer. The Lessee shall build or construct such fire lines or do such clearing on the land as the Authorized Officer decides is essential for forest, brush, and grass fire prevention which is or may be necessitated by the exercise of the privileges authorized by this lease, and shall maintain such fire tools at his headquarters or at the appropriate location on the land as are deemed necessary by such Officer.

(c) Approval of Construction. Not to clear or use the land for development or for construction purposes of any kind until a plan of construction and development therefor has been approved by the Authorized Officer and that in the location, design, construction and maintenance of all authorized works, camps, buildings, plants, waterways, roads, telegraph or telephone lines, pipelines, reservoirs, tanks, pumping stations, or other structures or clearance, Lessee shall do all things reasonably necessary to prevent or reduce scarring and erosion of the land, pollution of the water resources and any damage to the watershed.

(d) Damage to Property. To pay the Lessor or its tenant, as the case may be, for any and all damage to or destruction of property caused by the Lessee's operations hereunder; to save and hold the Lessor or the surface owner or their tenants harmless from all damage or claims for damage to persons or property resulting from the Lessee's operations under this lease; and where the surface of the leased land is owned by other than the Lessor, to pay such owner, or his tenant, as the case may be, for damage or injury to livestock, crops, trees, pipelines, buildings, and other improvements of the leased lands. That where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resources, to repair such damage and to take such corrective measures as are required by the Authorized Officer, including the reseedling or other restoration of the vegetative cover.

(e) Protection of Livestock; Access to Leased Lands. To install and maintain cattle guards to prevent the passage of livestock in any openings made in fences by the Lessee or his contractors to provide access to the lands covered by this lease for automotive and other equipment.

(f) Authorized Officer. All inquiries relating to this section should be addressed to the Authorized Officer named in Section 1(b) of this lease.

Sec. 4. Lessee--Agent. Prior to the beginning of operations the Lessee shall appoint and maintain at all times during the term of this lease a local agent upon whom may be served written orders or notices respecting matters contained in this lease, and shall inform the Authorized Officer and the Regional

Mining Supervisor of the Geological Survey, in writing, of the name and address of such agent. If a substitute agent is appointed, the Lessee shall immediately so inform the said Officers.

Sec. 5. Renewal Terms. The Lessor shall have the right to reasonably readjust and fix royalties payable hereunder at the end of the primary term of this lease and thereafter at the end of each successive renewal thereof unless otherwise provided by law at the time of the expiration of any such period, and to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereof; provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in the royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of this lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day. The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the Lessee that the lease cannot be successfully operated at a profit or for other reasons, and the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable hereunder if at the end of the primary or renewal period such an extension shall be in effect, but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time. If the Lessee shall be entitled to renewal without readjustment except of royalties payable hereunder, the Secretary of the Interior may in his discretion increase the royalty rate prescribed in subsection (b) of Section 2 up to, but not exceeding (i) 5% during the first ten-year renewal period, (ii) 6% during the second ten-year renewal period, and (iii) 7% during the third ten-year renewal period. The extent of readjustment of royalty, if any, to be made under this section shall be determined prior to the commencement of the renewal period.

Sec. 6. The Lessor expressly reserves:

(a) Rights Reserved. The right to permit for joint or several use easements or rights-of-way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands, and the preparation and shipment of the products thereof by or under authority of the Government, its Lessees or Permittees, and for other public purposes.

(b) Waiver of Conditions. The right to waive any breach of the covenants and conditions contained herein, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the Lessor with respect to any future breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 7. It is mutually agreed:

(a) Mining Methods. That this lease does not authorize the mining or removal of the mineral deposits by stripping, rim cutting, or open pit methods without the prior written

approval of the Authorized Officer and on such conditions as he may prescribe.

(b) Reduction or Smelting of Ores. That the reduction or smelting of ores on the leased land is expressly prohibited in the absence of an agreement between the Lessee and the Authorized Officer authorizing such use of the surface of the land and providing for the necessary protection of life and property. Such agreement shall contain all of the terms and conditions under which the reduction or smelting of ores may be carried on and any violation of that agreement shall be considered a violation of the terms of this lease for the purpose of Section 10.

(c) Uses and Disposition of Surface. That the leased land shall be subject at all times to any other lawful uses or sale by the United States, its Lessees, Permittees, Licensees, and Assigns; provided that such uses or sale shall not prevent, obstruct, or unduly interfere with any privilege granted under this lease; Provided, that the Lessee shall recognize existing uses and commitments in the form of grazing, timber cutting, and special use permits, water developments, ditch, road, trail, pipeline, telephone and telegraph lines, fence, rights-of-way, and other similar improvements, and to conduct his operations so as to interfere as little as possible with the rights and privileges granted by these permits or with other existing uses.

(d) Granting Leases for Other Minerals. That the granting of this lease will not preclude the issuance of other leases of the same land for the purpose of mining and extracting oil, gas, oil shale, coal, phosphate, potassium, sodium, and sulphur.

Sec. 8. Relinquishment of Lease. The Lessee may surrender this lease or any one or more legal subdivisions included in the leased premises. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof. A relinquishment must be filed in triplicate in the proper Land Office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the Lessee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the lands in accordance with the regulations and terms of the lease, and for the faithful compliance of all the terms of the lease.

Sec. 9. Removal of Equipment, etc., on Termination of Lease. On termination of this lease, by surrender, forfeiture, or otherwise, the Lessee shall have the privilege at any time within a period of one year thereafter of removing from the premises all machinery, equipment, tools, and materials, other than underground timbering placed by the Lessee in or on the leased lands, which are not necessary for the preservation of the mine. Any materials, tools, appliances, machinery, structures, and equipment, subject to removal as above provided, which are allowed to remain on the leased land shall become the property of the Lessor on expiration of the one-year period or such extension thereof as may be granted by the Lessor, but the Lessee shall remove any or all of such property when so directed by the Lessor.

Sec. 10. Proceedings in Case of Default. If the Lessee does not comply with the applicable regulations made a part hereof or the terms of this lease and such default continues for a period of 30 days, or such longer period as the Lessor determines may be reasonably required to correct the default, after service of written notice thereof by the Lessor, the Lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease or seek such other administrative, legal or equitable remedies as may be appropriate. Furthermore, if the Lessee fails to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the Lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage, or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the Lessee, but the Lessee shall not be held responsible for delays or casualties occasioned by causes beyond the Lessee's control.

Sec. 11. Heirs and Successors-in-Interest. Each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 12. Unlawful Interest. It is also further agreed that no Member of, or Delegate to, Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(1), shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of Section 3741 of the Revised Statutes of the United States, as amended (41 U.S.C., Sec. 22), and sections 431, 432, and 433, Title 18 U.S.C., relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

Sec. 13. Special Stipulations.

(a) In conformity with the principles of the Shipstead-Newton-Nolan Act of July 10, 1930 (16 U.S.C. 577), no occupancy or use of the surface within 400 feet of the shoreline of any lake or stream is authorized without the written approval of the Authorized Officer.

(b) Any and all operations authorized by this lease shall be done in accordance with a plan which must be submitted in triplicate and approved in writing by the Authorized Officer before such operations are begun. The operating plan will contain all such provisions as the Authorized Officer may reasonably determine are needed to maintain proper administration of the lands and surface resources. Where appropriate, depending upon the location and type of operation, the Authorized Officer may require the plan to contain provisions concerning the following matters:

1. The location and extent of areas to be occupied during operations.
2. The methods to be used in the operations.
3. The size and type of equipment to be used in the operations.
4. The capacity, character, standards of construction and size of all structures and facilities to be built.
5. The location and size of areas upon which vegetation will be destroyed or soil will be laid bare.

6. The steps which will be taken to prevent and control soil erosion.
7. The steps which will be taken to prevent water pollution.
8. The character, amount, and time of use of explosives or fire, including safety precautions which will be taken during their use.
9. The program proposed for rehabilitation and revegetation of disturbed lands.

If later operations require departure from or additions to the approved plan, revisions or amendments will be submitted in triplicate, with statements of the reasons for changes or additions, to the Authorized Officer for approval. Any and all operations conducted in advance of approval of an original, revised, or amended operating plan, or which are not in accord with an approved plan, constitute violations of the terms of this lease.

(c) If minerals from the leased premises be shipped outside the United States for treatment, Lessee shall, upon the call of the Lessor, and provided that there be no imposition of tariff, cause to be returned for sale or for use in the operations of the Lessee or of its affiliates in the United States quantities of copper equal to the quantities recovered from the minerals so shipped during the time of the call. The copper so returned shall be priced on no different basis than would then be applicable under circumstances prevailing had it been produced entirely within the United States and sold by a domestic producer, so that the prices will be competitive with those of domestic producers.

(d) Within 12 months after approval by the Authorized Officer Lessee will carry out a program in respect of this lease and the companion lease issued this day of drilling to ascertain the facts which will be essential to instituting production, and also will ship to the pilot plants of its parent company in Ontario, Canada, not less than 1,000 tons of ore to seek appropriate extractive metallurgical procedures therefor. The anticipated cost of the drilling program, to cover from 10,000 to 20,000 feet of drilling at an average cost of \$10 per foot is \$200,000. The estimated cost of preparing, transporting and treating the ore sample is \$125,000 to \$200,000; in addition revisions in and additions to the pilot plants in connection therewith are estimated to cost about \$250,000.

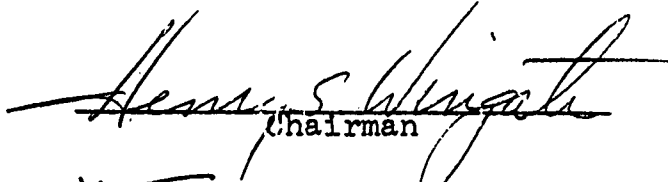
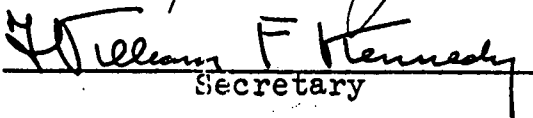
Sec. 14. Royalty Adjustment. If the Lessee shall have sunk a shaft for underground exploration or development or shall have otherwise commenced commercial development of the premises leased under this lease (or the companion lease issued to Lessee this day) within five years after the Regional Mining Supervisor shall have determined that the Federal and State governments have granted all necessary rights and authorizations for the construction, operation and maintenance of the leased premises, the rate of royalty payable under Section 2(b) with respect to the second ten years of the primary lease term shall be 4% in lieu of 4-1/2% as provided therein and the rates of royalty set forth in Section 5 shall not exceed (i) 4-1/2% during the first ten-year renewal

period, (ii) 5-1/2% during the second ten-year renewal period, and (iii) 6% during the third ten-year renewal period.

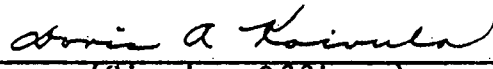
SIGNATURE OF LESSEE(S)

THE INTERNATIONAL NICKEL  
COMPANY, INC.

By

  
Chairman  
  
Secretary

THE UNITED STATES OF AMERICA

  
(Signing Officer)

Land Office Manager  
Eastern States Office  
(Title)

JUN 14 1966  
(Date)

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If this lease is executed by a corporation, it must bear the corporate seal.

#### EQUAL OPPORTUNITY

(a) The Nondiscrimination Clause, regarding "Equal Opportunity," in the attached mineral permit or lease, is amended by deleting references to the President's Committee on Equal Employment Opportunity, Executive Order No. 10925 of March 6, 1961, as amended, and section 303 of Executive Order No. 10925 of March 6, 1961, as amended; and substituting therefor the Secretary of Labor, Executive Order No. 11246 of September 24, 1965, and section 204 of Executive Order No. 11246 of September 24, 1965, respectively.

(b) In accordance with regulations of the Secretary of Labor, the rules, regulations, orders, instructions, designations, and other directives referred to in section 403(b) of Executive Order No. 11246, remain in effect and, where applicable, shall be observed in the performance of this contract until revoked or superseded by appropriate authority.



UNITED STATES  
DEPARTMENT OF  
AGRICULTURE

FOREST  
SERVICE

Superior  
National  
Forest

515 West 1st Street  
P.O. Box 338  
Duluth, MN 55801

Reply to: 2820

Date: February 9, 1987

Subject: INCO Lease Renewals

To: Regional Forester

Enclosed is a finding of categorical exclusion for my decision to proceed with the extension of Bureau of Land Management mineral leases ES 01352 and ES 01353. Usually this document would be signed by you, but in this case the leases designate me as authorizing officer. The activities authorized by these leases can be conducted in conformance with the management direction found in the Forest Plan.

*Clay G. Beal*

CLAY G. BEAL  
Forest Supervisor

Enclosure

BUREAU OF LAND MANAGEMENT  
DIVISION OF SOLID MINERALS  
VV MAR 07 1989  
ROLLA, MISSOURI 65401



FINDING OF CATEGORICAL EXCLUSION

CONDITIONS OF EXTENDING BUREAU OF LAND MANAGEMENT LEASES

Lake and St. Louis Counties, Minnesota  
Superior National Forest  
Kawishiwi Ranger District

I have decided that the terms and conditions of Bureau of Land Management (BLM) leases ES 01352 and ES 01353 are adequate to prevent or mitigate unacceptable impacts and that no additional conditions need to be added prior to their renewal provided that none of the terms and conditions related to my authority are diminished in any manner.

These leases include approximately 4,945 acres of Federal minerals located in T61N, R11W; T62N, R11W; and T62N, R10W of Lake and St. Louis Counties, Minnesota.

Public comments were solicited by publishing notices in local news papers, by radio interviews, and by contacting individuals. There were five responses to the public involvement. Four respondents asked for additional information. After the information was sent, they did not comment further. The fifth respondent was against issuing the leases based on general principals and also claimed tribal ownership of minerals in the lease area. The respondent was informed that we are not deciding if the leases should be issued but instead are deciding if new restrictions need to be added before extending them and that the question of tribal ownership of minerals goes far beyond the scope of this analysis. A copy of the lease and other information was also sent to the respondent but again no additional comments were received.

The only significant concern identified by the Forest Service was that the lease does not specifically require INCO to comply with certain laws and regulations. I have decided that Section 13 which requires my approval of an operating plan plus the requirement in subsection 3 (J) that the lessee comply with regulations of the Secretaries of Agriculture and Interior and with applicable Federal and State laws gives me the broad authority needed to require compliance with applicable laws and regulations even though they are not specifically listed in the lease.

These leases have been in effect for 20 years and past experience has shown that their terms and conditions provide adequate authority to prevent or mitigate unacceptable impacts. During this time the area has been extensively explored, hundreds of test holes have been drilled, both surface and underground bulk samples have been taken, and a large scale open pit mining operation proposed and evaluated. At no time were the terms and conditions of the leases found to be inadequate.

Implementation of this decision will take place immediately. This decision is subject to administrative review pursuant to 36 CFR 211.18.

*Clay G. Beal*

CLAY G. BEAL  
Forest Supervisor

2-6-87  
DATE





FINDING OF NO SIGNIFICANT IMPACT / DECISION RECORD

Preference Right Lease Numbers: MNES 1352, MNES 1353

Proposed Action: Lease renewals, Superior National Forest

State: Minnesota; County: Lake, St. Louis; Acreage: 4,864.78

Background: The Superior National Forest has completed the attached "Finding of Categorical Exclusion", which analyzes the above proposed action. The Superior National Forest Supervisor signed this document on February 6, 1987, indicating that "the terms and conditions of Bureau of Land Management (BLM) leases ES 01352 and ES 01353 are adequate to prevent or mitigate unacceptable impacts and that no additional conditions need to be added prior to their renewal provided that none of the terms and conditions related to my authority are diminished in any manner." This analysis adequately addresses impacts associated with hardrock mineral lease renewals, and this proposal is within the scope of analysis covered by this document. The Forest Service consented to renewal of this lease via a letter submitted to the Eastern States Office of BLM dated June 19, 1987, with a letter of clarification following on March 24, 1988. The consent requires that the existing terms and conditions affecting surface uses be attached to the renewed leases.

Environmental Considerations: I have reviewed the above-referenced document and have considered the environmental consequences of this proposal. All environmental considerations have been adequately addressed in the above-referenced document.

Finding of No Significant Impact: Based on the analysis in the referenced environmental document, this decision will not result in any significant impacts to the environment, therefore an environmental impact statement is not required.

Vernant Vegt  
Assistant District Manager for Solid Minerals

3/7/89  
Date

Decision: It is my decision to approve the proposed action, subject to existing lease terms and conditions.

Rationale: The decision to renew this lease will not result in any undue or unnecessary environmental degradation.

\_\_\_\_\_  
District Manager, Milwaukee

\_\_\_\_\_  
Date

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

MINERAL LEASE

This lease entered into on the 1st day of June, 1966 between the United States of America, as Lessor, through the Bureau of Land Management, and The International Nickel Company, Inc., a Delaware corporation with offices at 67 Wall Street, New York, New York, as Lessee, pursuant to the authority set out in, and subject to, Section 402 of the President's Reorganization Plan No. 3 of 1946, 60 Stat. 1099, and the Act of June 30, 1950, 64 Stat. 311, and to all regulations of the Secretary of the Interior now in force when not inconsistent with any of the provisions herein.

WITNESSETH:

Sec. 1. (a) Rights of Lessee. In consideration of the rents and royalties to be paid and conditions and covenants to be observed as herein set forth the Lessor grants to the Lessee, subject to all privileges and uses heretofore duly authorized and prior valid claims, the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals and, with the exception of oil, gas, oil shale, coal, phosphate, potassium, sodium, or sulphur, any other minerals in, upon, or under the following described lands in the United States, in the State of Minnesota:

In Lake County:

Township 61 North, Range 11 West of the Fourth Principal Meridian:

Section 3, Lot 2  
SW-1/4 of SW-1/4  
S-1/2 of SE-1/4  
Section 5, Lots 1 and 2  
S-1/2 of NE-1/4  
Lot 6  
Lot 7  
NE-1/4 of SW-1/4  
S-1/2 of SW-1/4  
N-1/2 of SE-1/4

Section 6, Lots 13, 22, 23 and 24  
Section 7, Lots 1, 2, 3, 4, 9, 10, 12, 15, 16 and 19  
Section 8, Lots 2 and 6  
Section 9, All except W-1/2 of NW-1/4  
Section 18, Lots 2, 7, 9, 12, 13, 14, 15, 16, 17, 18  
19 and 20

Section 19, Lots 2, 3, 4, 5, 7 and 8

Township 62 North, Range 11 West of the Fourth Principal Meridian:

Section 27, SE-1/4 of SW-1/4  
Section 32, Lot 4  
Section 33, Lots 6 and 7  
Section 34, NW-1/4

In St. Louis County:

Township 61 North, Range 12 West of the Fourth Principal Meridian:

Section 25, Lot 2  
SW-1/4 of SW-1/4

containing ~~2,569.87~~ acres, more or less, together with the right

2,610.07

SEE DECISION 9-1-66

to construct and maintain thereon such structures and other facilities as may be necessary or convenient for the mining, preparation, and removal of said minerals, for a period of twenty (20) years with a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 CFR § 3221.4(f) and the provisions of this lease.

(b) Authorized Agency Representative. The United States agency having administrative control over the surface use of the land is the Department of Agriculture and its authorized agency representative, hereinafter called the "Authorized Officer," to whom inquiries should be addressed is the Supervisor, Superior National Forest at Duluth, Minnesota.

Sec. 2. In consideration of the foregoing, the Lessee agrees:

(a) Rentals. To pay to the Lessor annually in advance, beginning with the date of this lease, rental of one dollar (\$1.00) for each acre or fraction thereof for each lease year until production commences, the rental payment for the year in which production commences to be credited on royalties that accrue during that lease year.

(b) Royalty. To pay the Lessor within 30 days after the end of each period prescribed in subsection (e) of this section a royalty (i) at the rate of 4% during the first ten years of the primary term and (ii) at the rate of 4-1/2% during the second 10 years of the primary term, of the gross value of the minerals mined hereunder which are shipped to the concentrating mill during each such period. Said value for the purposes of this Agreement shall be taken to be one-third of the market prices of a quantity of fully-refined copper and of a quantity of fully-refined nickel equal to the respective quantities of unrefined copper and unrefined nickel contained in said minerals so shipped to the concentrating mill.

(c) Minimum royalty. Beginning after the tenth year of the lease, except with respect to any periods during which operations are interrupted by strikes, the elements or casualties not attributable to the Lessee, to mine each year from the area covered by the lease a quantity of the leased minerals such that the royalties payable for said year under subsections (b) and (d) hereof will during the primary term of the lease be at least equal to \$5 per annum per acre included in the leased premises at the beginning of such year, and during each renewal period of the lease be at least equal to \$10 per annum per acre included in the leased premises at the beginning of such year; or in lieu thereof to pay the Lessor as royalty within 30 days after the end of such year that amount which, when added to the royalties, if any, payable for said year under subsections (b) and (d) hereof, will equal the minimum royalty for that year herein provided. Lessor may in its discretion, waive, reduce, or suspend the minimum royalty payment for reasonable periods of time in the interest of conservation or when such action does not adversely affect the interest of the United States of America in accordance with the regulation 43 CFR § 3222.6-2.

(d) Additional royalty. (1) In order to provide a royalty in respect of any associated products (as hereinafter defined), to pay the Lessor within 30 days after the end of each period prescribed in subsection (e) of this section an additional royalty of 0.3% of the gross value of the minerals mined under this lease (determined on the basis of their copper and nickel content as provided in subsection (b) of this section) which are shipped to the concentrating mill during such

period. During the first ten years of the lease such additional royalty shall not be payable if the Lessee demonstrates that no associated products are being recovered from the minerals mined under this lease, but beginning after the tenth year of the lease, such additional royalty shall be payable whether or not associated products are recovered from the minerals mined under this lease.

(2) The Lessee will also pay the Lessor within 90 days after the end of each lease year a further additional royalty of 1% of the amount, if any, by which the gross value of associated products exceeds 20% of the aggregate market price as fully-refined metals of the quantity of copper and nickel contained in the minerals mined under this lease which are shipped to the concentrating mill during such lease year. At the request of either party following any lease year for which said 1% royalty has been payable and the gross value of associated products exceeds 30% of the said aggregate market price, representatives of the Lessor and the Lessee shall meet at a mutually agreeable time to consider and decide whether additional royalty for associated products shall continue to be payable as provided in this subsection (d), or shall (in lieu thereof) be payable on such basis as may be negotiated. In connection with such meeting the Lessee will make a reasonable investigation to ascertain insofar as practicable the volume of associated products which appear to be currently recovered from the minerals mined under this lease, and will provide the Lessor with the results of this investigation.

(3) For purposes of this agreement, the term "associated products" shall mean (i) fully-refined chemical elements (other than copper and nickel) not further processed and (ii) end products containing such elements produced by the Lessee (prior to full refining) for their value as such (other than products valuable chiefly by reason of their copper and/or nickel content), which are, in either case, recovered by the Lessee from minerals mined under this lease and sold or used by the Lessee during the lease year for which additional royalty, if any, is due; and the gross value of such products shall be taken to be the aggregate of the market prices of the respective quantities of associated products so sold or used by the Lessee.

(e) Statement. To furnish for each month or such longer period as may be prescribed by the Regional Mining Supervisor of the Geological Survey, statements in detail in such form as may be prescribed by him, of the amount and value under subsection (b) of this section of the minerals mined hereunder which are shipped to the concentrating mill during such period, for use in determining royalties, such statements to be furnished within 30 days from the close of such period. Falsification of such statements shall be grounds for cancellation of the lease.

(f) Market prices. For the purposes of this section the "market price of fully-refined copper" per pound shall be the average of the monthly average prices per pound for Domestic Refinery Electrolytic Copper in carload lots, f.o.b. Atlantic Seaboard refineries, published in E. & M. J. Metal and Mineral Markets for the period for which the royalty is being computed, and the "market price of fully-refined nickel" per pound shall be the average of the monthly average prices per pound for nickel (i.e., electrolytic nickel cathodes) in carload lots, f.o.b. Port Colborne, Ontario, Canada, United States import duty (if any) included, published in E. & M. J. Metal and Mineral Markets for the period for which royalty is being computed; and the respective "market prices of associated products" per unit

shall be the average of the monthly average prices per unit for such respective products in their usual and customary shipping quantities, f.o.b. their usual and customary place of disposal, published in E. & M. J. Metal and Mineral Markets for the period for which additional royalty, if any, is being computed.

(g) Bond. To furnish and maintain a bond in the sum of \$ 10,000.00 conditioned upon compliance with the terms and conditions of this lease, and to increase the amount thereof or furnish such other bond as may be required.

(h) Inspection. To permit at all reasonable times: (1) inspection by any authorized officer of the leased premises and all surface and underground improvements, works, machinery, equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and (2) the Lessor to make copies of and extracts from any or all books and records pertaining to operations under this lease.

(i) Maps--Reports. To furnish, in duplicate, to the Regional Mining Supervisor, at such times as he may require, a plat in the manner and form prescribed by him showing prospecting and development work and improvements on the leased land and other related information, with a report as to all buildings, structures, and other works or equipment, situated elsewhere and owned or operated in conjunction with, or as a part of the operations conducted hereunder.

(j) To comply with all regulations of the Secretary of the Interior and the Secretary of Agriculture applicable to the leased premises which are under his jurisdiction; and to conduct operations in an orderly manner and in accordance with regulations in 30 CFR, Part 2250, and the applicable Federal and State laws; and to exercise reasonable diligence, skill, and care in the operation of the property; and to carry on all operations in accordance with approved methods and practices, having due regard for the prevention of damage to mineral deposits, water horizons and property, injury to life and health, and economic waste.

*7-11-46  
for memo to  
Regional  
Mining  
Staff (12-26)  
Jed 7-5-46*

(k) Taxes. To pay when due all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, output of mines, and other rights, property, and assets of the Lessee.

(l) Deliver Premises. To deliver up to the Lessor in good order and condition and subject to the provisions of Section 9 hereof on the termination of this lease as a result of forfeiture thereof the lands covered thereby, including all underground timbering and such other supports and structures as are necessary for the preservation of the mine.

(m) Assignment. Not to assign this lease, or any interest therein, whether by direct assignment, operating agreement, working or royalty interest, or otherwise, nor sublet any portion of the leased premises, except with the approval in writing of the Lessor. All such assignments or subleases must be submitted in triplicate within 90 days from the date of execution and must contain all of the terms and conditions agreed upon by the parties thereto. Not to create overriding royalties in excess of those authorized by regulation 43 CFR § 3226.1.

An assignment of all or part of the record title to a portion of the acreage in the lease shall separate the lease into separate leaseholds and the terms hereof shall apply

separately to the segregated portions. Advance annual rental payments, if previously terminated, shall be resumed as to an undeveloped segregated portion on the next anniversary date of the lease; the minimum royalty payment herein specified shall apply separately to the segregated portions and the time allowed within which to commence operations on an undeveloped segregated portion shall be such reasonable period as shall be prescribed by the Lessor at the time the assignment is approved.

(n) Nondiscrimination Clauses. In connection with the performance of work under this contract, the Lessee agrees as follows:

(1) The Lessee will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the authorized contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Lessee will, in all solicitations or advertisements for employees placed by or on behalf of the Lessee state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The Lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the Lessee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Lessee will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The Lessee will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as

otherwise provided by law.

(7) The Lessee will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Lessee will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Lessee becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

(o) Payments. Rentals under this lease shall be paid to the Manager of the proper Land Office, except that when this lease becomes productive the rentals and royalties shall be paid to the Regional Mining Supervisor of the United States Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 3. Lessee further agrees:

(a) Protection of Property. To conduct all operations hereunder with due regard for good land management, not to cut or destroy timber without previous permission from the Authorized Officer and to pay for such timber at rates prescribed by him; to avoid damage to improvements, timber, crops, or other cover; unless otherwise authorized by the Authorized Officer, not drill any well, carry on operations, make excavations, construct tunnels, drill, or otherwise disturb the surface of the lands within 200 feet of any building thereon and whenever required in writing by the Authorized Officer, and upon any partial or total relinquishment, cancellation or termination of this lease as to that portion of the land to which his rights have terminated, to fence or fill all sump holes, ditches and other excavations, remove or cover all debris, and so far as reasonably possible, reseed or otherwise restore the surface of the lands to their former condition, or to a productive or other condition satisfactory to the Authorized Officer, including the removal of structures as and if required, and when required by such Officer to bury all pipelines below plow depth.

(b) Fire precautions. To do all in his power to prevent and suppress fires on the land and vicinity, and to require his employees, contractors, and subcontractors to do likewise. Unless prevented by circumstances over which he has no control, to place his employees, contractors, and subcontractors at the disposal of the Authorized Officer for the purpose of fighting fires on or originating on the land or on adjacent areas or caused by the negligence of the Lessee or his employees, contractors, and subcontractors, with the understanding that payment for such services shall be made at rates to be determined by such Authorized Officer but not less than the current rates of pay prevailing in the vicinity for services of a similar character: Provided, that if the

Lessee, his employees, contractors, or subcontractors, or employees of any of them, caused or could have prevented the origin or spread of said fire or fires, no payment shall be made for services so rendered. During periods of serious fire danger, as may be specified by the Authorized Officer, the Lessee shall prohibit smoking and the building of camp and lunch fires by his employees, contractors, and subcontractors, within the leased area except at established camps, and shall enforce this prohibition by all means within his power: Provided, that the Authorized Officer may designate safe places where, after all inflammable material has been cleared away, campfires may be built for the purpose of heating lunches and where, at the option of the Lessee, smoking may be permitted. The Lessee will not burn rubbish, trash, or other inflammable materials except with the consent of the Authorized Officer. The Lessee shall build or construct such fire lines or do such clearing on the land as the Authorized Officer decides is essential for forest, brush, and grass fire prevention which is or may be necessitated by the exercise of the privileges authorized by this lease, and shall maintain such fire tools at his headquarters or at the appropriate location on the land as are deemed necessary by such Officer.

(c) Approval of Construction. Not to clear or use the land for development or for construction purposes of any kind until a plan of construction and development therefor has been approved by the Authorized Officer and that in the location, design, construction and maintenance of all authorized works, camps, buildings, plants, waterways, roads, telegraph or telephone lines, pipelines, reservoirs, tanks, pumping stations, or other structures or clearance, Lessee shall do all things reasonably necessary to prevent or reduce scarring and erosion of the land, pollution of the water resources and any damage to the watershed.

(d) Damage to Property. To pay the Lessor or its tenant, as the case may be, for any and all damage to or destruction of property caused by the Lessee's operations hereunder; to save and hold the Lessor or the surface owner or their tenants harmless from all damage or claims for damage to persons or property resulting from the Lessee's operations under this lease; and where the surface of the leased land is owned by other than the Lessor, to pay such owner, or his tenant, as the case may be, for damage or injury to livestock, crops, trees, pipelines, buildings, and other improvements of the leased lands. That where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resources, to repair such damage and to take such corrective measures as are required by the Authorized Officer, including the reseedling or other restoration of the vegetative cover.

(e) Protection of Livestock; Access to Leased Lands. To install and maintain cattle guards to prevent the passage of livestock in any openings made in fences by the Lessee or his contractors to provide access to the lands covered by this lease for automotive and other equipment.

(f) Authorized Officer. All inquiries relating to this section should be addressed to the Authorized Officer named in Section 1(b) of this lease.

Sec. 4. Lessee--Agent. Prior to the beginning of operations the Lessee shall appoint and maintain at all times during the term of this lease a local agent upon whom may be served written orders or notices respecting matters contained in this lease, and shall inform the Authorized Officer and the Regional



Mining Supervisor of the Geological Survey, in writing, of the name and address of such agent. If a substitute agent is appointed, the Lessee shall immediately so inform the said Officers.

Sec. 5. Renewal Terms. The Lessor shall have the right to reasonably readjust and fix royalties payable hereunder at the end of the primary term of this lease and thereafter at the end of each successive renewal thereof unless otherwise provided by law at the time of the expiration of any such period, and to readjust other terms and conditions of the lease, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereof; provided, however, that the Lessee shall have the right to three successive ten-year renewals of this lease with any readjustment in the royalties payable hereunder limited to that hereinafter provided and with no readjustment of any of the other terms and conditions of this lease unless at the end of the primary term of this lease the Lessee shall not have begun production, either hereunder or under the companion lease granted to the Lessee this day. The Secretary of the Interior may grant extensions of time for commencement of production in the interest of conservation or upon a satisfactory showing by the Lessee that the lease cannot be successfully operated at a profit or for other reasons, and the Lessee shall be entitled to renewal as herein provided without readjustment except of royalties payable hereunder if at the end of the primary or renewal period such an extension shall be in effect, but the Lessee shall not be entitled to subsequent such renewals unless it shall have begun production within the extended time. If the Lessee shall be entitled to renewal without readjustment except of royalties payable hereunder, the Secretary of the Interior may in his discretion increase the royalty rate prescribed in subsection (b) of Section 2 up to, but not exceeding (i) 5% during the first ten-year renewal period, (ii) 6% during the second ten-year renewal period, and (iii) 7% during the third ten-year renewal period. The extent of readjustment of royalty, if any, to be made under this section shall be determined prior to the commencement of the renewal period.

Sec. 6. The Lessor expressly reserves:

(a) Rights Reserved. The right to permit for joint or several use easements or rights-of-way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands, and the preparation and shipment of the products thereof by or under authority of the Government, its Lessees or Permittees, and for other public purposes.

(b) Waiver of Conditions. The right to waive any breach of the covenants and conditions contained herein, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the Lessor with respect to any future breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 7. It is mutually agreed:

(a) Mining Methods. That this lease does not authorize the mining or removal of the mineral deposits by stripping, rim cutting, or open pit methods without the prior written

approval of the Authorized Officer and on such conditions as he may prescribe.

(b) Reduction or Smelting of Ores. That the reduction or smelting of ores on the leased land is expressly prohibited in the absence of an agreement between the Lessee and the Authorized Officer authorizing such use of the surface of the land and providing for the necessary protection of life and property. Such agreement shall contain all of the terms and conditions under which the reduction or smelting of ores may be carried on and any violation of that agreement shall be considered a violation of the terms of this lease for the purpose of Section 10.

(c) Uses and Disposition of Surface. That the leased land shall be subject at all times to any other lawful uses or sale by the United States, its Lessees, Permittees, Licensees, and Assigns; provided that such uses or sale shall not prevent, obstruct, or unduly interfere with any privilege granted under this lease; Provided, that the Lessee shall recognize existing uses and commitments in the form of grazing, timber cutting, and special use permits, water developments, ditch, road, trail, pipeline, telephone and telegraph lines, fence, rights-of-way, and other similar improvements, and to conduct his operations so as to interfere as little as possible with the rights and privileges granted by these permits or with other existing uses.

(d) Granting Leases for Other Minerals. That the granting of this lease will not preclude the issuance of other leases of the same land for the purpose of mining and extracting oil, gas, oil shale, coal, phosphate, potassium, sodium, and sulphur.

Sec. 8. Relinquishment of Lease. The Lessee may surrender this lease or any one or more legal subdivisions included in the leased premises. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof. A relinquishment must be filed in triplicate in the proper Land Office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the Lessee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the lands in accordance with the regulations and terms of the lease, and for the faithful compliance of all the terms of the lease.

Sec. 9. Removal of Equipment, etc., on Termination of Lease. On termination of this lease, by surrender, forfeiture, or otherwise, the Lessee shall have the privilege at any time within a period of one year thereafter of removing from the premises all machinery, equipment, tools, and materials, other than underground timbering placed by the Lessee in or on the leased lands, which are not necessary for the preservation of the mine. Any materials, tools, appliances, machinery, structures, and equipment, subject to removal as above provided, which are allowed to remain on the leased land shall become the property of the Lessor on expiration of the one-year period or such extension thereof as may be granted by the Lessor, but the Lessee shall remove any or all of such property when so directed by the Lessor.

Sec. 10. Proceedings in Case of Default. If the Lessee does not comply with the applicable regulations made a part hereof or the terms of this lease and such default continues for a period of 30 days, or such longer period as the Lessor determines may be reasonably required to correct the default, after service of written notice thereof by the Lessor, the Lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease or seek such other administrative, legal or equitable remedies as may be appropriate. Furthermore, if the Lessee fails to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the Lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage, or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the Lessee, but the Lessee shall not be held responsible for delays or casualties occasioned by causes beyond the Lessee's control.

Sec. 11. Heirs and Successors-in-Interest. Each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 12. Unlawful Interest. It is also further agreed that no Member of, or Delegate to, Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(1), shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of Section 3741 of the Revised Statutes of the United States, as amended (41 U.S.C., Sec. 22), and sections 431, 432, and 433, Title 18 U.S.C., relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

Sec. 13. Special Stipulations.

(a) In conformity with the principles of the Shipstead-Newton-Nolan Act of July 10, 1930 (16 U.S.C. 577), no occupancy or use of the surface within 400 feet of the shoreline of any lake or stream is authorized without the written approval of the Authorized Officer.

(b) Any and all operations authorized by this lease shall be done in accordance with a plan which must be submitted in triplicate and approved in writing by the Authorized Officer before such operations are begun. The operating plan will contain all such provisions as the Authorized Officer may reasonably determine are needed to maintain proper administration of the lands and surface resources. Where appropriate, depending upon the location and type of operation, the Authorized Officer may require the plan to contain provisions concerning the following matters:

1. The location and extent of areas to be occupied during operations.
2. The methods to be used in the operations.
3. The size and type of equipment to be used in the operations.
4. The capacity, character, standards of construction and size of all structures and facilities to be built.
5. The location and size of areas upon which vegetation will be destroyed or soil will be laid bare.

6. The steps which will be taken to prevent and control soil erosion.
7. The steps which will be taken to prevent water pollution.
8. The character, amount, and time of use of explosives or fire, including safety precautions which will be taken during their use.
9. The program proposed for rehabilitation and revegetation of disturbed lands.

If later operations require departure from or additions to the approved plan, revisions or amendments will be submitted in triplicate, with statements of the reasons for changes or additions, to the Authorized Officer for approval. Any and all operations conducted in advance of approval of an original, revised, or amended operating plan, or which are not in accord with an approved plan, constitute violations of the terms of this lease.

(c) If minerals from the leased premises be shipped outside the United States for treatment, Lessee shall, upon the call of the Lessor, and provided that there be no imposition of tariff, cause to be returned for sale or for use in the operations of the Lessee or of its affiliates in the United States quantities of copper equal to the quantities recovered from the minerals so shipped during the time of the call. The copper so returned shall be priced on no different basis than would then be applicable under circumstances prevailing had it been produced entirely within the United States and sold by a domestic producer, so that the prices will be competitive with those of domestic producers.

(d) Within 12 months after approval by the Authorized Officer Lessee will carry out a program in respect of this lease and the companion lease issued this day of drilling to ascertain the facts which will be essential to instituting production, and also will ship to the pilot plants of its parent company in Ontario, Canada, not less than 1,000 tons of ore to seek appropriate extractive metallurgical procedures therefor. The anticipated cost of the drilling program, to cover from 10,000 to 20,000 feet of drilling at an average cost of \$10 per foot is \$200,000. The estimated cost of preparing, transporting and treating the ore sample is \$125,000 to \$200,000; in addition revisions in and additions to the pilot plants in connection therewith are estimated to cost about \$250,000.

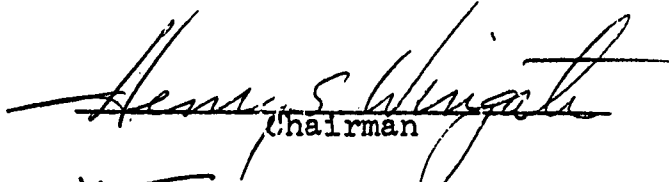
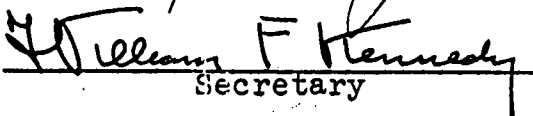
Sec. 14. Royalty Adjustment. If the Lessee shall have sunk a shaft for underground exploration or development or shall have otherwise commenced commercial development of the premises leased under this lease (or the companion lease issued to Lessee this day) within five years after the Regional Mining Supervisor shall have determined that the Federal and State governments have granted all necessary rights and authorizations for the construction, operation and maintenance of the leased premises, the rate of royalty payable under Section 2(b) with respect to the second ten years of the primary lease term shall be 4% in lieu of 4-1/2% as provided therein and the rates of royalty set forth in Section 5 shall not exceed (i) 4-1/2% during the first ten-year renewal

period, (ii) 5-1/2% during the second ten-year renewal period, and (iii) 6% during the third ten-year renewal period.

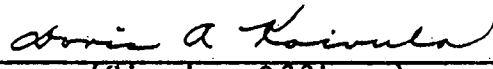
SIGNATURE OF LESSEE(S)

THE INTERNATIONAL NICKEL  
COMPANY, INC.

By

  
Chairman  
  
Secretary

THE UNITED STATES OF AMERICA

  
(Signing Officer)

Land Office Manager  
Eastern States Office  
(Title)

JUN 14 1966  
(Date)

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If this lease is executed by a corporation, it must bear the corporate seal.

#### EQUAL OPPORTUNITY

(a) The Nondiscrimination Clause, regarding "Equal Opportunity," in the attached mineral permit or lease, is amended by deleting references to the President's Committee on Equal Employment Opportunity, Executive Order No. 10925 of March 6, 1961, as amended, and section 303 of Executive Order No. 10925 of March 6, 1961, as amended; and substituting therefor the Secretary of Labor, Executive Order No. 11246 of September 24, 1965, and section 204 of Executive Order No. 11246 of September 24, 1965, respectively.

(b) In accordance with regulations of the Secretary of Labor, the rules, regulations, orders, instructions, designations, and other directives referred to in section 403(b) of Executive Order No. 11246, remain in effect and, where applicable, shall be observed in the performance of this contract until revoked or superseded by appropriate authority.

## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 2"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:97 (20 conversations)

Created: 08-07-2018 at 11:50 AM

# Conversation Contents

**Revised Twin Op - quick review**

**Attachments:**

/2. Revised Twin Op - quick review/1.1 2017.12.08 Twin Metals -- Draft Final Redline with OGC response.docx

**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

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**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 08:48:25 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Revised Twin Op - quick review  
**Attachments:** 2017.12.08 Twin Metals -- Draft Final Redline with OGC response.docx

Attached is the version with my proposed edits to respond to OGC's concerns. Please review (it won't take long) and let me know if you see any problems. I will send to Dan by 11:45 or so. Karen, I know you may not have had a chance to review by then, but the revisions are so minor I'm sure we can address any concerns you have later.

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 09:01:37 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** Gary Lawkowski <gary.lawkowski@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Revised Twin Op - quick review

Looks good to me. Thanks.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Fri, Dec 8, 2017 at 8:48 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

Attached is the version with my proposed edits to respond to OGC's concerns. Please review (it won't take long) and let me know if you see any problems. I will send to Dan by 11:45 or so. Karen, I know you may not have had a chance to review by then, but the revisions are so minor I'm sure we can address any concerns you have later.

---

**"McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>**

**From:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 09:15:24 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, Gary Lawkowski  
**CC:** <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>, Karen Hawbecker  
<[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Subject:** Re: Revised Twin Op - quick review

Jack and Gary:

I have no edits or comments.

Richard

On Fri, Dec 8, 2017 at 11:01 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:

Looks good to me. Thanks.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
[505 Marquette Ave., NW Ste. 1800](#)  
[Albuquerque, NM 87102](#)

Phone: (202) 208-4853

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---

**"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**



**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 09:51:54 GMT-0700 (MST)  
**To:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>  
"Collier, Briana" <briana.collier@sol.doi.gov>, Gary Lawkowski  
**CC:** <gary.lawkowski@sol.doi.gov>, Karen Hawbecker  
<karen.hawbecker@sol.doi.gov>  
**Subject:** Re: Revised Twin Op - quick review

Folks: Gary has pointed out tha (b) (5)

. What do you think about just (b) (5)

(b) (5)

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Jack and Gary:

I have no edits or comments.

Richard

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Looks good to me. Thanks.

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**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

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**CC:** "McNeer, Richard" <richard.mcneer@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
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**From:** "McNeer, Richard" <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>  
**Sent:** Fri Dec 08 2017 10:03:18 GMT-0700 (MST)  
**To:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, Gary Lawkowski  
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**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Fri Dec 08 2017 10:48:38 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** "Collier, Briana" <briana.collier@sol.doi.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**Subject:** Re: Revised Twin Op - quick review

I see that that last part of that footnote could have been a can of worms. I agree it was best to delete it.

On Fri, Dec 8, 2017 at 12:03 PM, McNeer, Richard <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)> wrote:

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DRAFT – Privileged and Confidential  
December 8, 2017

M-

Memorandum

To: Director, Bureau of Land Management

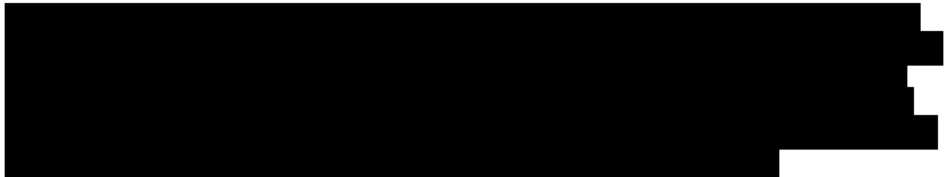
From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

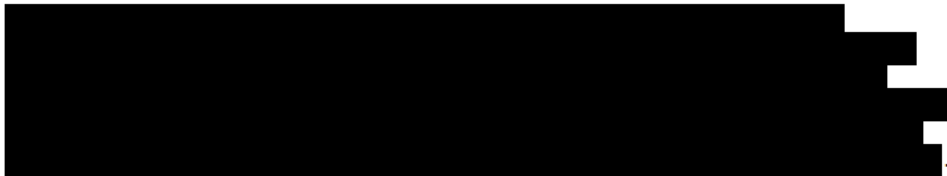
(b) (5)



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|



(b) (5)

[REDACTED]

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Formatted: Font: 10 pt



[illegible]

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(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

A large, solid black rectangular redaction box covers the majority of the page content, starting below the header and extending nearly to the bottom. The text "(b) (5)" is printed in red at the top left of this redacted area. On the left side of the redacted area, there are several small, white, L-shaped marks that appear to be artifacts from a scanning or redaction process.

(b) (5)  
(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

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(b) (5)





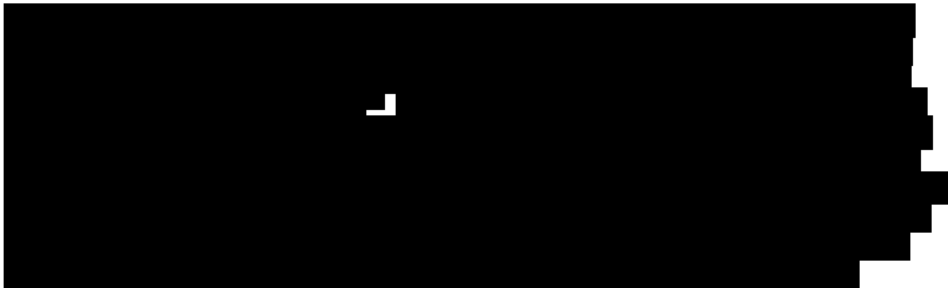
(b) (5)



(b) (5)



(b) (5)



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(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

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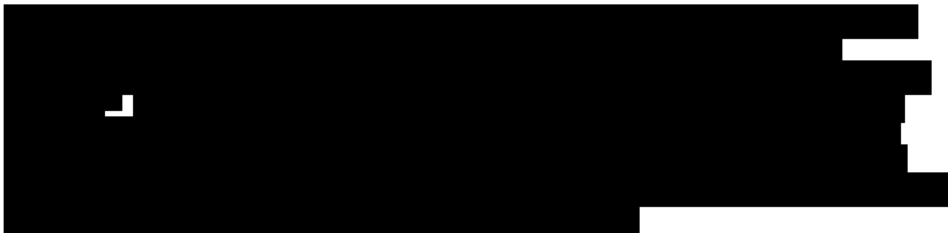
[REDACTED]

(b) (5)





(b) (5)



## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 2"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:97 (20 conversations)

Created: 08-07-2018 at 11:51 AM

# Conversation Contents

**Fwd: OGC comments on Twin Metals opinion**

**Attachments:**

/3. Fwd: OGC comments on Twin Metals opinion/1.1 11-29 Draft M-Opinion Attachment 1.pdf  
/3. Fwd: OGC comments on Twin Metals opinion/1.2 11-29 Draft M-Opinion Attachment 2.pdf  
/3. Fwd: OGC comments on Twin Metals opinion/1.3 11-29 Draft M-Opinion Attachment 3.pdf  
/3. Fwd: OGC comments on Twin Metals opinion/1.4 Twin Metals -- Draft 11 29 17 -- OGC Comments.docx

**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Thu Dec 07 2017 11:24:31 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**CC:** Daniel Jorjani <daniel.jorjani@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>  
**Subject:** Fwd: OGC comments on Twin Metals opinion  
11-29 Draft M-Opinion Attachment 1.pdf 11-29 Draft M-Opinion Attachment 2.pdf 11-29 Draft M-Opinion Attachment 3.pdf Twin Metals -- Draft 11 29 17 -- OGC Comments.docx  
**Attachments:**

Attached are USDA's comments. If you have the time, I would appreciate receiving DMR's suggestions on whether/how to address the comments on the latest version by the end of the day. I see that at least one of their comments is addressed already in the new version.

----- Forwarded message -----

**From:** Mulach, Ronald - OGC <[RONALD.MULACH@ogc.usda.gov](mailto:RONALD.MULACH@ogc.usda.gov)>  
**Date:** Thu, Dec 7, 2017 at 12:05 PM  
**Subject:** OGC comments on Twin Metals opinion  
**To:** "[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>, "Hawbecker, Karen ([karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov))" <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>  
**Cc:** "LINDEN, RALPH - OGC" <[RALPH.LINDEN@ogc.usda.gov](mailto:RALPH.LINDEN@ogc.usda.gov)>

Please see the attached OGC comments on the revised M opinion. Some of our comments regarding (b) (5) are repetitive and can probably be resolved with a paragraph? We'll work on something and send it along. Let us know if you'd like to set up a call to discuss, thanks.

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ news release

For Release JUNE 14, 1966

The Department of the Interior announced today that mining leases have been granted to The International Nickel Company, Inc., on 4,894 acres within the Superior National Forest in Lake and St. Louis Counties, Minnesota, to produce copper and nickel ore.

The leases make possible development work leading to the anticipated large-scale production of copper and nickel in the area near Ely, Minn. They grant mining rights to the company for 20 years, renewable for 30 years at 10-year intervals if the property is brought into production within the initial 20-year term.

The company must, within the first year, conduct drilling operations and ship ores to pilot plants for metallurgical process research. The leases call for royalty payments to the Government, based on the value of the minerals mined, beginning at four percent and escalating over the years of the contract. The royalty structure is designed to stimulate early and rapid development of the properties.

In executing the leases, the Department of the Interior has collaborated with the Department of Agriculture and other government agencies in requiring precautions to protect surface resources in the mining area. The leased land is outside the famous Boundary Waters Canoe Area.



The company has conducted exploration work for some 15 years under prospecting permits issued by the Government. In taking core samples, the company found mineral deposits in quantities legally sufficient to establish preference rights to lease. Since the Government's rejection of a lease proposal in 1956, prospecting permits have been renewed on an annual basis.

If any of the copper is processed outside of the United States, the Government may demand that an equivalent amount be returned to the United States for use in the company's domestic operations, or for sale. Copper so returned would be priced on the same basis as if it had been processed entirely in the United States.

The ore deposits range from 33 feet to about 815 feet in thickness.

The Department of the Interior, through its Bureau of Land Management, has responsibility for mineral leasing on National Forest lands as well as on public domain lands under the Bureau's direct jurisdiction.

X X X

1/20/65

MAJOR CHANGES IN INCO PROPOSED LEASES

|                                | <u>Old - 1954</u>                                                                                                                                                | <u>New 10/1/65</u>                                                                                                                                                                                                                                    |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Terms                          | 50 years                                                                                                                                                         | 20-yr. - 10-yr. renewals                                                                                                                                                                                                                              |
| Royalty                        | 1st 10 yr. 4%<br>15 yr. 5%<br>25 yr. 7½%                                                                                                                         | 20 yr. - 3%<br>10 yr. - 3.5%<br>10 yr. - 4.0%<br>10 yr. - 4.5%                                                                                                                                                                                        |
| Rent                           | 25¢ 1st yr.<br>50¢ 2nd 3rd yrs.<br>\$1.00 4th - 10 yr.                                                                                                           | \$1.00 until production commences                                                                                                                                                                                                                     |
| Minimum Royalty                | None - 1st 10 yr.<br>\$5.00 11 - 25 yr.<br>\$10.00 26 - 50 yr.                                                                                                   | None - 1st 10 yr.<br>\$5.00 - 11 - 20 yr.<br>\$10.00 - 21 - 50 yr.                                                                                                                                                                                    |
| Additional Royalty             | None - 1st 10 yr.<br>0.3% of gross value of minerals.<br>Add 1% if gross value of associated minerals exceeds 20% of Cu-N value.<br>Rate investigated 25th year. | None - 1st 10 yr.<br>Same except at request of either party rate to be investigated if value of associated exceeds 30% of aggregate metal value.                                                                                                      |
| Overriding Royalty             | Not to exceed 1/2 Federal royalty                                                                                                                                | Not to exceed 1% of gross value.                                                                                                                                                                                                                      |
| Renewal                        | Terms readjusted<br>20-yr. periods after<br>1st 50-yr. term                                                                                                      | Right to 3 successive<br>10-yr. terms after primary<br>20 yrs. with no change in<br>terms unless not in<br>production the 1st 20-yr.<br>term on either one lease or<br>the other. Secretary may<br>grant extension of time to<br>commence production. |
| Monopoly and Fair Price Clause | In                                                                                                                                                               | Out                                                                                                                                                                                                                                                   |
| National Emergency Clause      | In                                                                                                                                                               | Out                                                                                                                                                                                                                                                   |

United States  
Department of  
Agriculture

Forest  
Service

Eastern  
Region

310 West Wisconsin Avenue  
Milwaukee, Wisconsin 53203

Reply to: 2820

Date: JUN 19 1987

Subject: BLM Preference Right Leases, ES 01352 and ES 01353  
Inco Alloys International, Inc. - (Superior NF - MN)

To: Director, Eastern States Office, Bureau of Land Management

Subject to the reclamation situation being resolved (see our letter dated 6/15), we consent to the renewal of the above noted leases for a 10-year period. The existing lease terms and conditions are adequate.

This decision is supported by the Superior National Forest Plan and Environmental Impact Statement, dated June 6, 1986, a copy of which is on file at your office. No further analysis is necessary.

The lands are not located within any areas identified in the Department of the Interior and Related Agencies Appropriation Act for FY 87, P.L. 99-500 (10/18/86).

*Floyd J. Marita*

FLOYD J. MARITA  
Regional Forester

cc:

Superior NF  
MKE District Office  
Inco Alloys International, Inc. - FOR YOUR INFORMATION ONLY

CWilliams





United States  
Department of  
Agriculture

Forest  
Service

R-9

---

Caring for the Land and Serving the People

Reply to: 2820

Date: JUN 15 1987

Subject: Bond Relinquishment, ES 01352, 01353

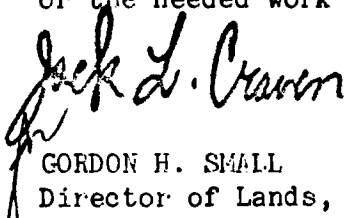
To: Director, BLM-ESO

Your 3500 (971) FAJ letter of May 13, 1987, requests our recommendation regarding termination of bonds for these leases in Minnesota (Superior NF).

We recommend against termination of bonds for ES 01352 and ES 01353.

Current reclamation needs for these leases include permanent closure of a vertical shaft measuring 10'x18'x1000', and restoration of about ten acres of cleared land associated with the shaft and a surface rock sampling area.

We can recommend for bond termination only after reclamation is complete, or the needed work is covered under a different bond.



GORDON H. SMALL  
Director of Lands, Watershed  
and Minerals Management

cc:

Superior NF  
BLM - Mke

JJacks:es

DRAFT – Privileged and Confidential  
November 29<sup>4</sup>, 2017

M-

Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)

Commented [P1]: Comment 1. (b) (5)

Commented [P2]: Comment 2. (b) (5)

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Commented [P3]: Comment 4. (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

(b) (5)

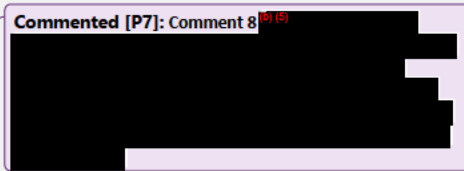
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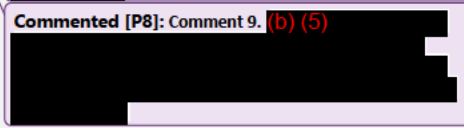
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(b) (5)




(b) (5)



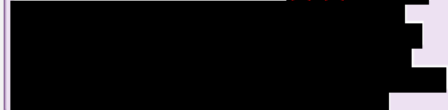
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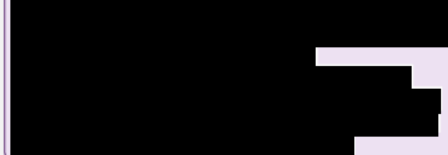
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Commented [P11]: Comment 12. (b) (5)



Commented [P12]: Comment 13. (b) (5)



(b) (5)



(b) (5)



(b) (5)

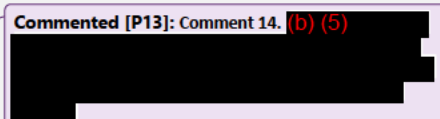


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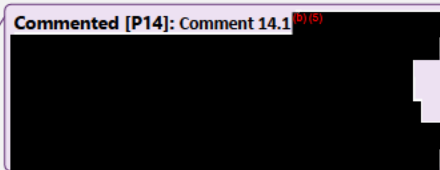
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Commented [P14]: Comment 14.1 (b) (5)



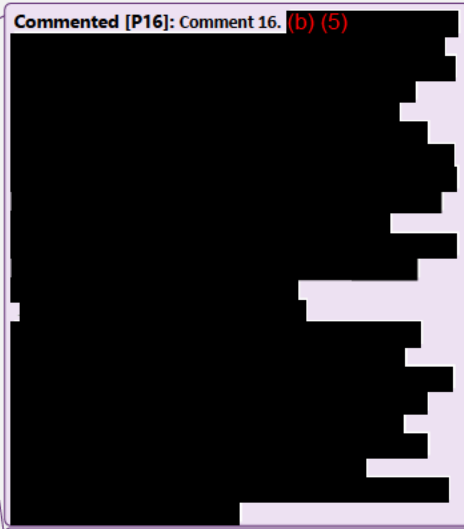
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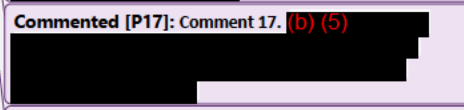
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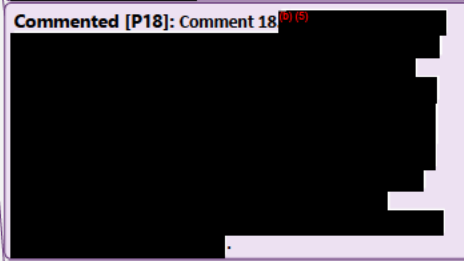
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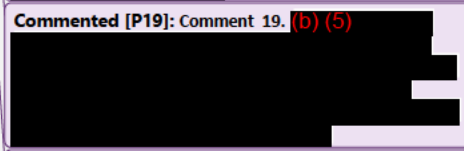
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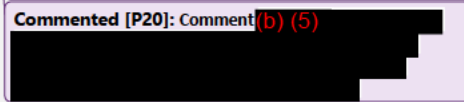
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Commented [P20]: Comment (b) (5)

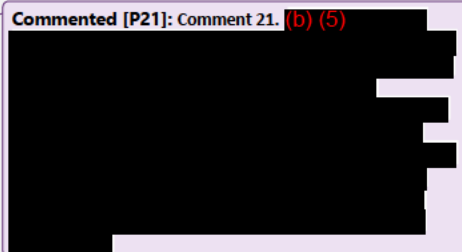




(b) (5)



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(b) (5)

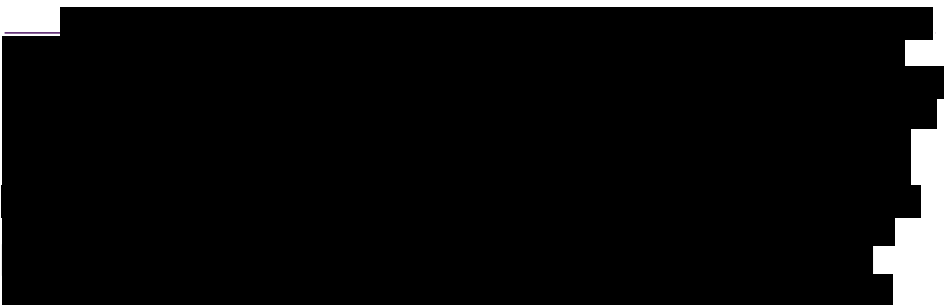


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(b) (5)



(b) (5)



(b) (5)



(b) (5)

Commented [P23]: Comment 23. (b) (5)

Commented [P24]: Comment 24. (b) (5)

Commented [P25]: Comment 25. (b) (5)

Commented [P26]: Comment 26. (b) (5)

Commented [P27]: See Comment 25.

Commented [P28]: See Comment 25.

(b) (5)

Commented [P29]: See Comment 25.

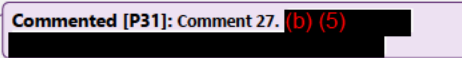
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(b) (5)



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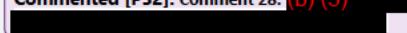




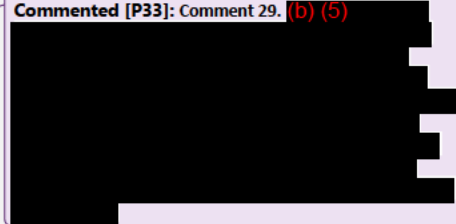
(b) (5)



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Commented [P33]: Comment 29. (b) (5)



(b) (5)



## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 2"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:97 (20 conversations)

Created: 08-07-2018 at 11:51 AM

# Conversation Contents

## Twin Metals Revisions

### Attachments:

/4. Twin Metals Revisions/1.1 Twin Metals -- Draft 11 29 17.docx



**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Tue Dec 05 2017 08:00:21 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>, Briana Collier <briana.collier@sol.doi.gov>  
**Subject:** Twin Metals Revisions  
**Attachments:** Twin Metals -- Draft 11 29 17.docx

Attached is a redlined version of the proposed Twin Metals M-Opinion that addresses comments we received from ENRD. I've listed below what ENRD suggested we do. Number 5 is the big change, and I have not yet heard back from Dan and David as to whether they support this revised approach. So footnote 66 may go away on its own, but I wanted to see if you had any concerns over this approach. Please provide any suggested edits as soon as reasonably possible. Here are the DOJ points:

1. (b) (5)



(b) (5)

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Tue Dec 05 2017 09:34:58 GMT-0700 (MST)  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Twin Metals Revisions

I am looking through this now and should have any comments together in the next hour or two.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Tue, Dec 5, 2017 at 8:00 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

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1. (b) (5)

(b) (5)



---

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Tue Dec 05 2017 09:43:18 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Twin Metals Revisions

Thank you, Briana!

On Tue, Dec 5, 2017 at 11:34 AM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
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1. (b) (5)



If we do not want to take this approach, it should be simple to delete this footnote and revert back.

---

**"Collier, Briana" <briana.collier@sol.doi.gov>**

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Tue Dec 05 2017 10:06:55 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Twin Metals Revisions

Karen, I know the party is coming up soon and that Richard has been at DOJ at the Juliana moot this morning. Would you like me to send my comments just to you and Richard, or also to Jack? Thank you.

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1. (b) (5)





(b) (5)

---

**"Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>**

**From:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**Sent:** Tue Dec 05 2017 10:24:03 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Twin Metals Revisions

Briana, Please send your edits to me and Richard. Jack will be going to the party as well, so we'll have time to review your edits when we return from the party.

Also, Jack called and we talked about the need to begin preparing a letter from Mitch at ESO to the Forest Service officially informing them about the new M-Op and informing them that BLM will work with them on an appropriate environmental process. We might include something that says (b) (5). Let's give some thought about the appropriate content of the letter.

The other letter we need to prepare is a letter (or decision?) from BLM ESO to Twin Metals informing them of the new M-Opinion and reinstating the prior leases and the lease renewal application. Jack would like for us to do some research about (b) (5).

Could you work on a draft of the Twin Metals letter/decision first? Thank you, Briana. --Karen

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(b) (5)

[REDACTED]

[REDACTED]

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**"Collier, Briana" <briana.collier@sol.doi.gov>**

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Tue Dec 05 2017 10:28:27 GMT-0700 (MST)  
**To:** "Hawbecker, Karen" <karen.hawbecker@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>  
**Subject:** Re: Twin Metals Revisions

Sure thing. I will send you and Richard my comments on the revised M-opinion and then get started on a draft of the letter to Twin Metals.

Briana Collier  
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(b) (5)



**"Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>**

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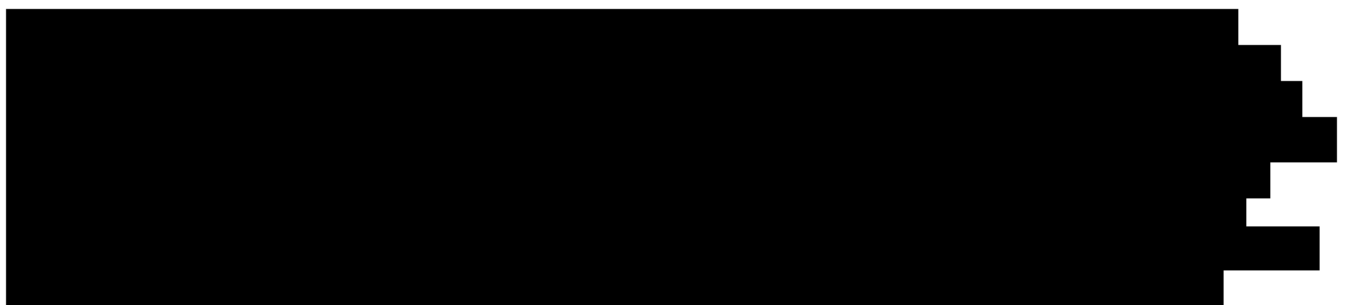

**From:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Sent:** Tue Dec 05 2017 10:32:52 GMT-0700 (MST)  
**To:** Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Briana Collier <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Subject:** Re: Twin Metals Revisions

Footnote 66 has been removed. I think it can be deleted without changing any of the text, but please keep that in mind when reviewing. We would like to issue the opinion this week.

On Tue, Dec 5, 2017 at 10:00 AM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:  
| Attached is a redlined version of the proposed Twin Metals M-Opinion that addresses

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M-

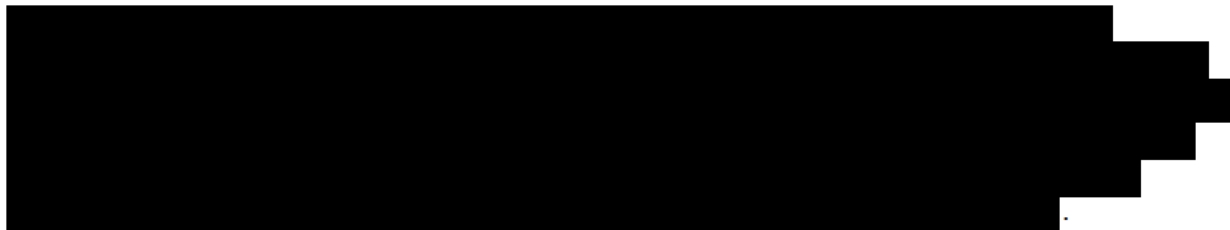
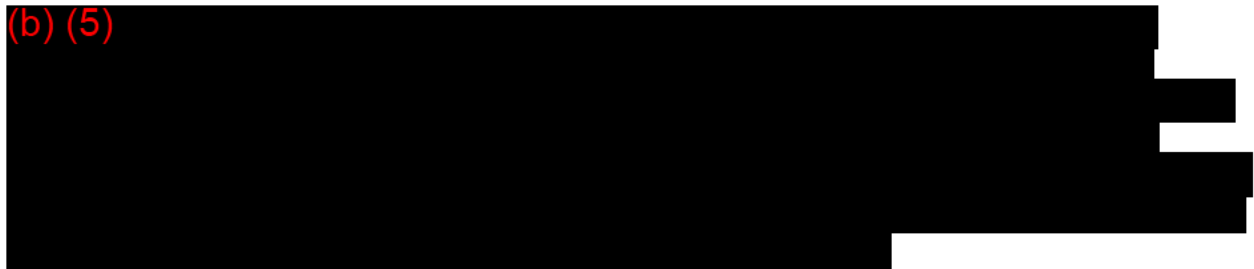
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)



(b) (5)

[REDACTED]

[REDACTED]

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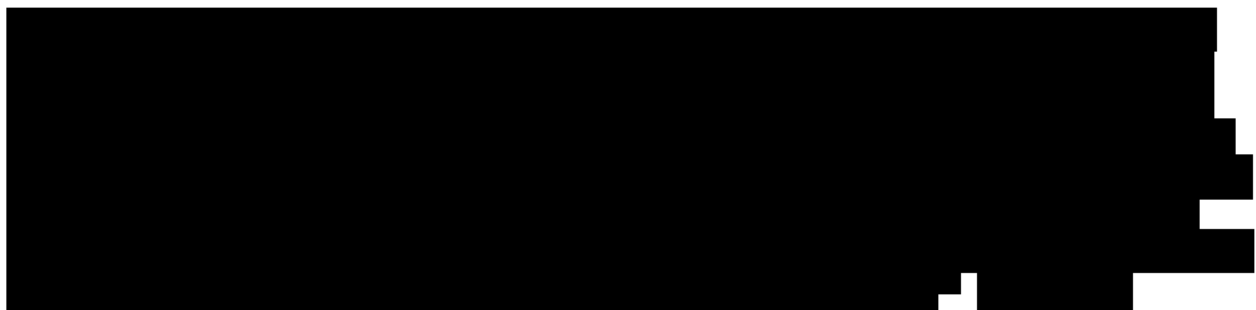



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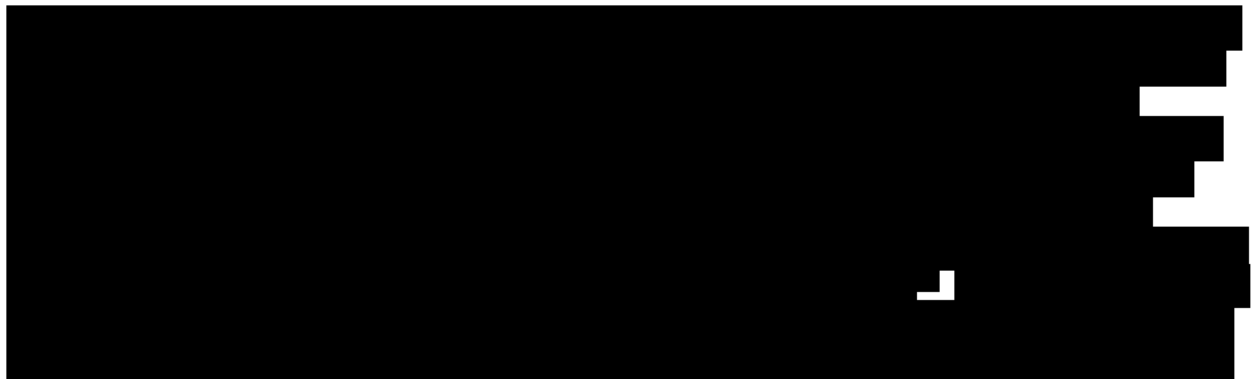
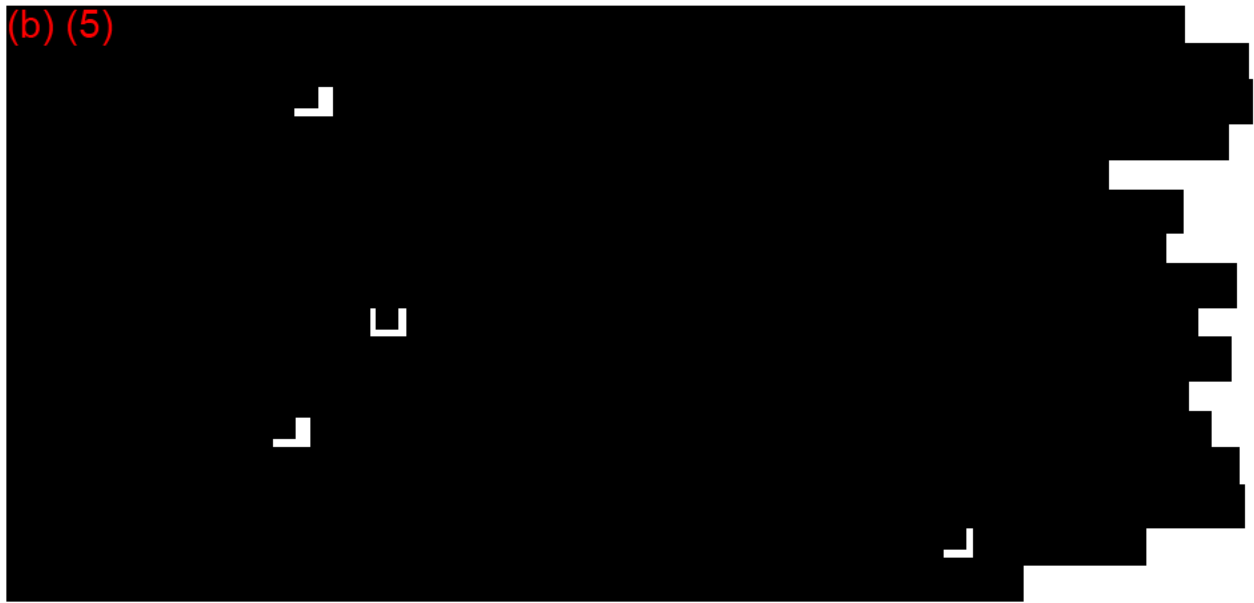
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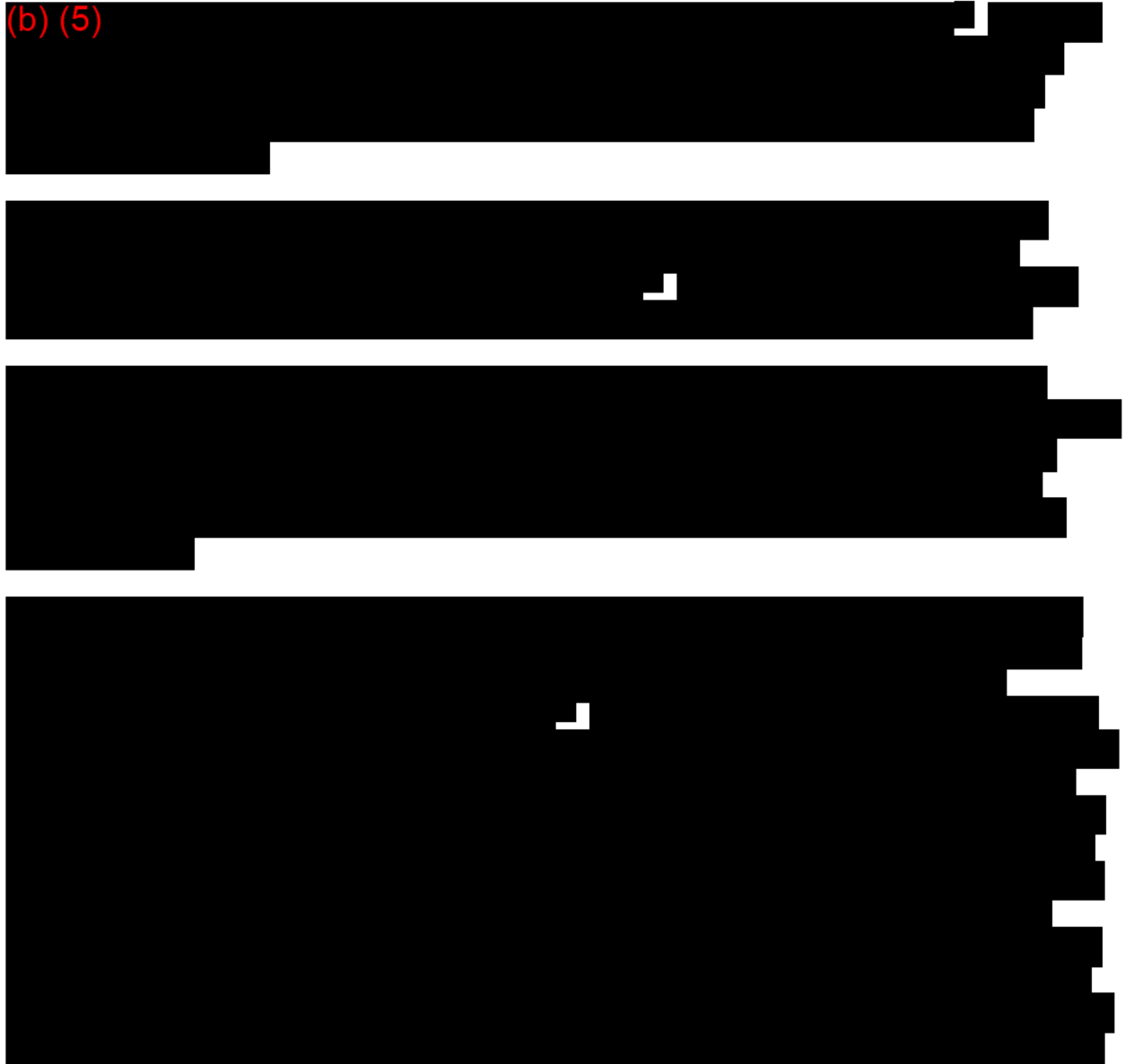
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(b) (5)



(b) (5)



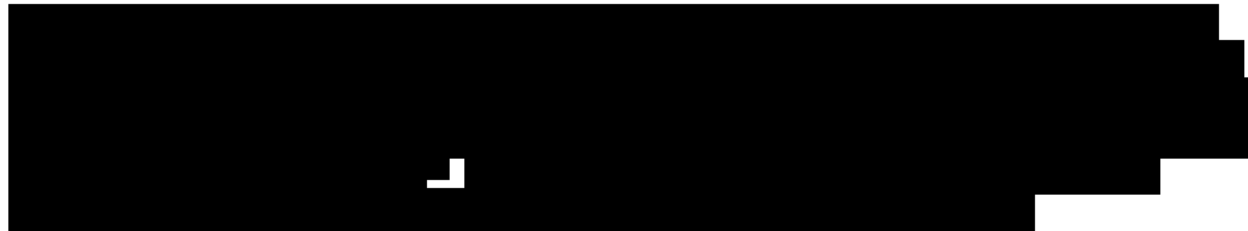
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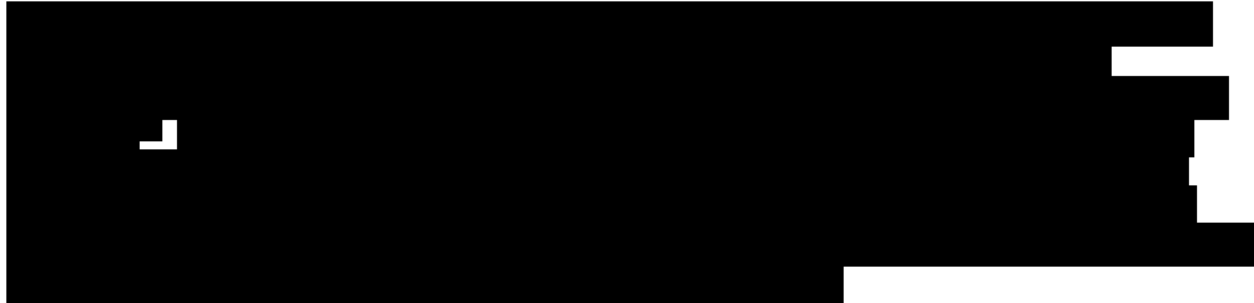

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(b) (5)

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## **Label: "Twin Metals/TMM FOIA request/SOL-2018-00089/Part 2"**

**Created by:**[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)

Total Messages in label:97 (20 conversations)

Created: 08-07-2018 at 11:51 AM

# Conversation Contents

## Twin Metals Rewrite

### Attachments:

/5. Twin Metals Rewrite/1.1 Twin Metals -- Draft 11 29 17.docx  
/5. Twin Metals Rewrite/3.1 Twin Metals -- Draft 11 29 17+bwc.docx

**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Wed Nov 29 2017 15:34:54 GMT-0700 (MST)  
**To:** Briana Collier <briana.collier@sol.doi.gov>, Richard McNeer <richard.mcneer@sol.doi.gov>  
**CC:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**Subject:** Twin Metals Rewrite  
**Attachments:** Twin Metals -- Draft 11 29 17.docx

Please take a quick look at page 11 and see if it (b) (5) .

**"Collier, Briana" <briana.collier@sol.doi.gov>**

---

**From:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**Sent:** Wed Nov 29 2017 15:52:18 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**Subject:** Re: Twin Metals Rewrite

This looks good to me. I think the additions sufficiently bolster the argument.

Briana Collier  
Attorney-Adviser, Division of Mineral Resources  
U.S. Department of the Interior, Office of the Solicitor  
505 Marquette Ave., NW Ste.1800  
Albuquerque, NM 87102

Phone: (202) 208-4853

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On Wed, Nov 29, 2017 at 3:34 PM, Haugrud, Kevin <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)> wrote:

Please take a quick look at page 11 and see if it (b) (5)

**"Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>**

---

**From:** "Collier, Briana" <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)>  
**Sent:** Wed Nov 29 2017 18:08:33 GMT-0700 (MST)  
**To:** "Haugrud, Kevin" <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
Richard McNeer <[richard.mcneer@sol.doi.gov](mailto:richard.mcneer@sol.doi.gov)>, Karen  
**CC:** Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Gary Lawkowski  
<[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>  
**Subject:** Re: Twin Metals Rewrite  
**Attachments:** Twin Metals -- Draft 11 29 17+bwc.docx

Here is my stab at the two footnotes we discussed, added on to the draft Jack sent in this email chain as footnotes 61 and 65.

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**"Haugrud, Kevin" <jack.haugrud@sol.doi.gov>**

---

**From:** "Haugrud, Kevin" <jack.haugrud@sol.doi.gov>  
**Sent:** Thu Nov 30 2017 08:24:04 GMT-0700 (MST)  
**To:** "Collier, Briana" <briana.collier@sol.doi.gov>  
**CC:** Richard McNeer <richard.mcneer@sol.doi.gov>, Karen Hawbecker <karen.hawbecker@sol.doi.gov>, Gary Lawkowski <gary.lawkowski@sol.doi.gov>  
**Subject:** Re: Twin Metals Rewrite

Thanks Briana. As you initially thought, I think the second footnote raises issues we do not want to address. On the first one, after reading the footnote, I decided we needed to expand the text a bit as well as adding a footnote. So I did that. I also went through and adjusted tone when addressing the existing M-Opinion. I am not yet distributing the revised draft because Dan asked to see it first. I have sent it to him and will send you all the revised version after Dan has completed his review.

On Wed, Nov 29, 2017 at 8:08 PM, Collier, Briana <[briana.collier@sol.doi.gov](mailto:briana.collier@sol.doi.gov)> wrote:  
Here is my stab at the two footnotes we discussed, added on to the draft Jack sent in this email chain as footnotes 61 and 65.

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M-

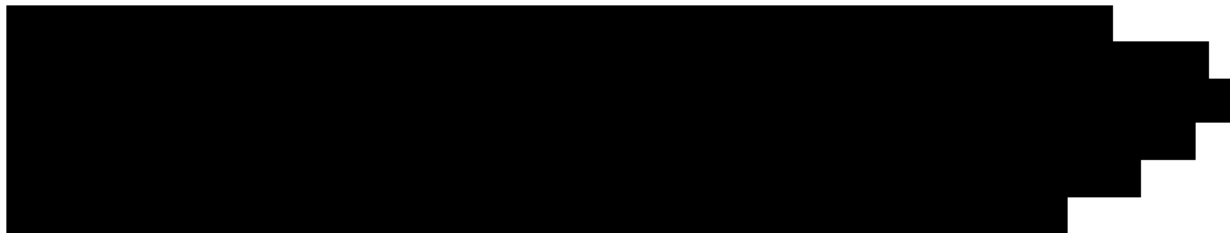
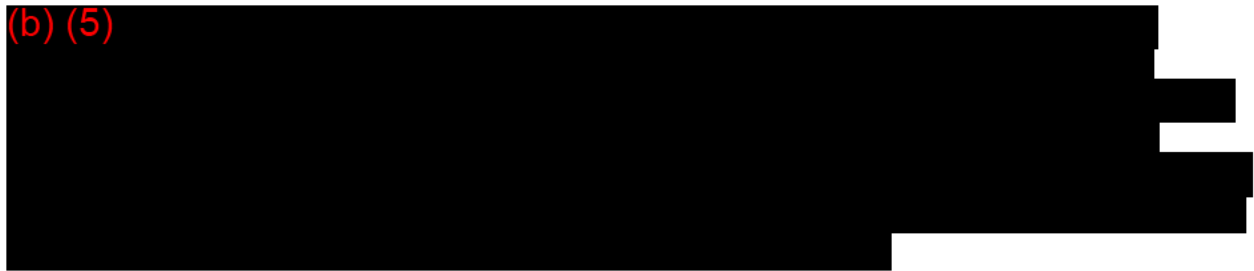
Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

(b) (5)



(b) (5)

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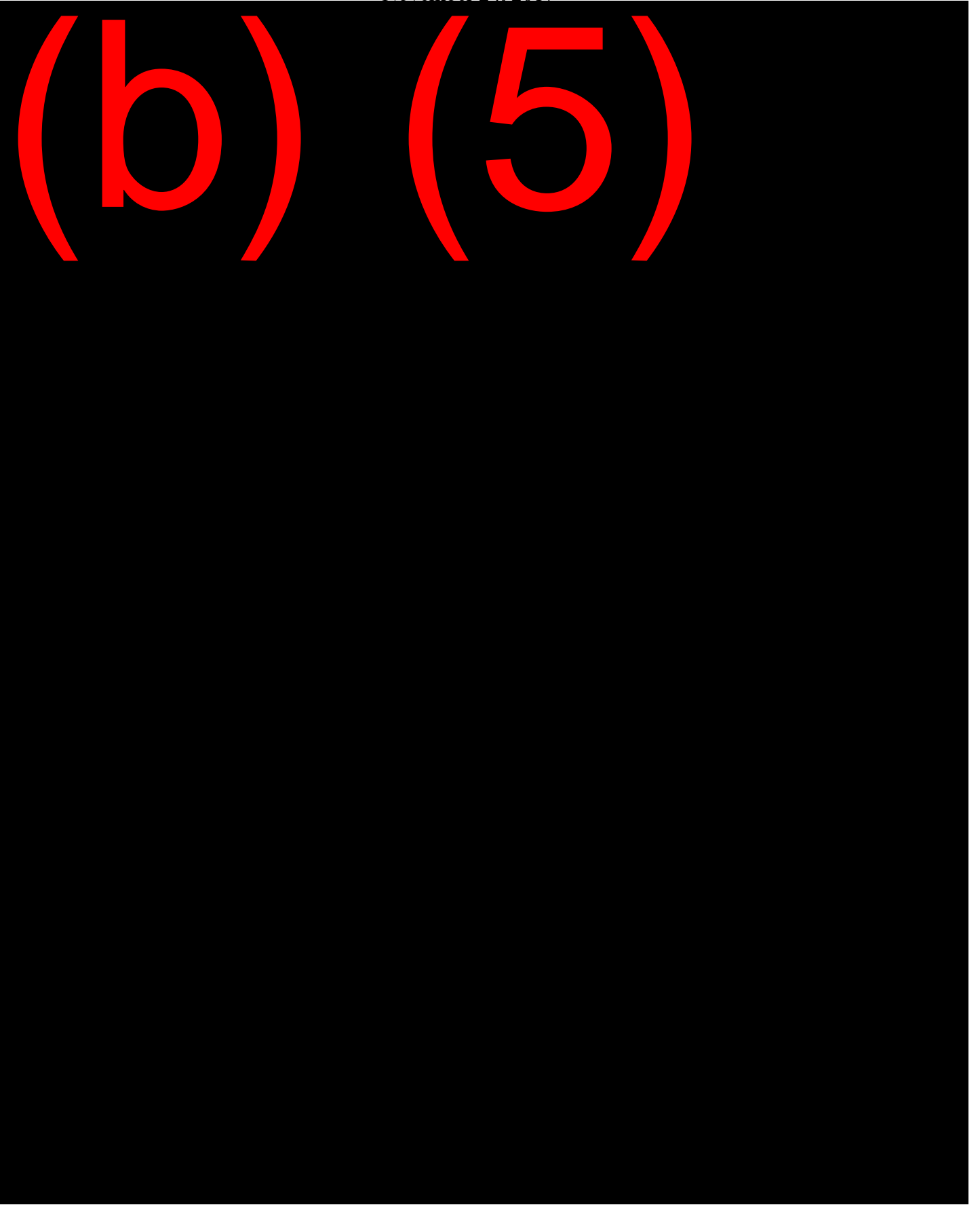
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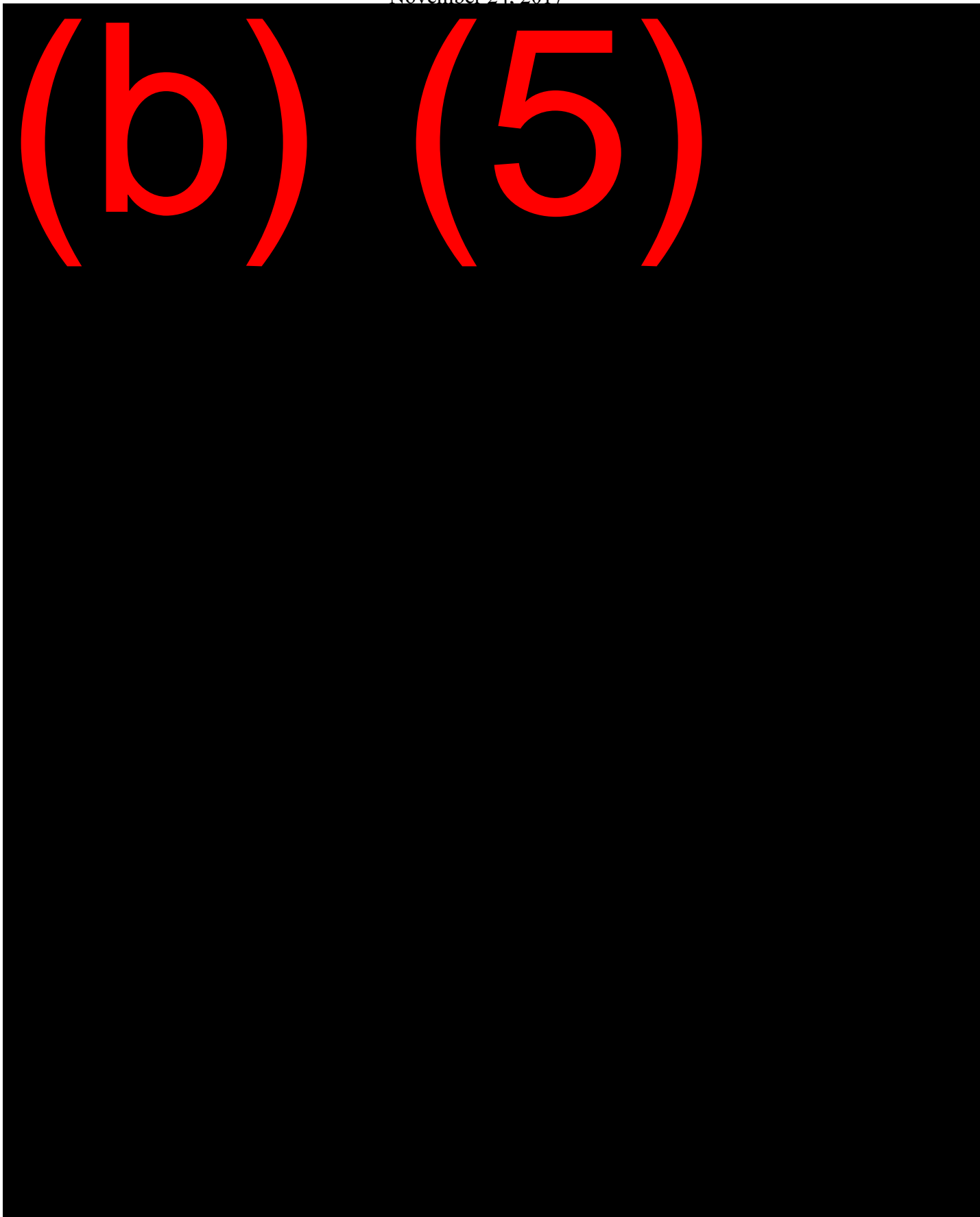
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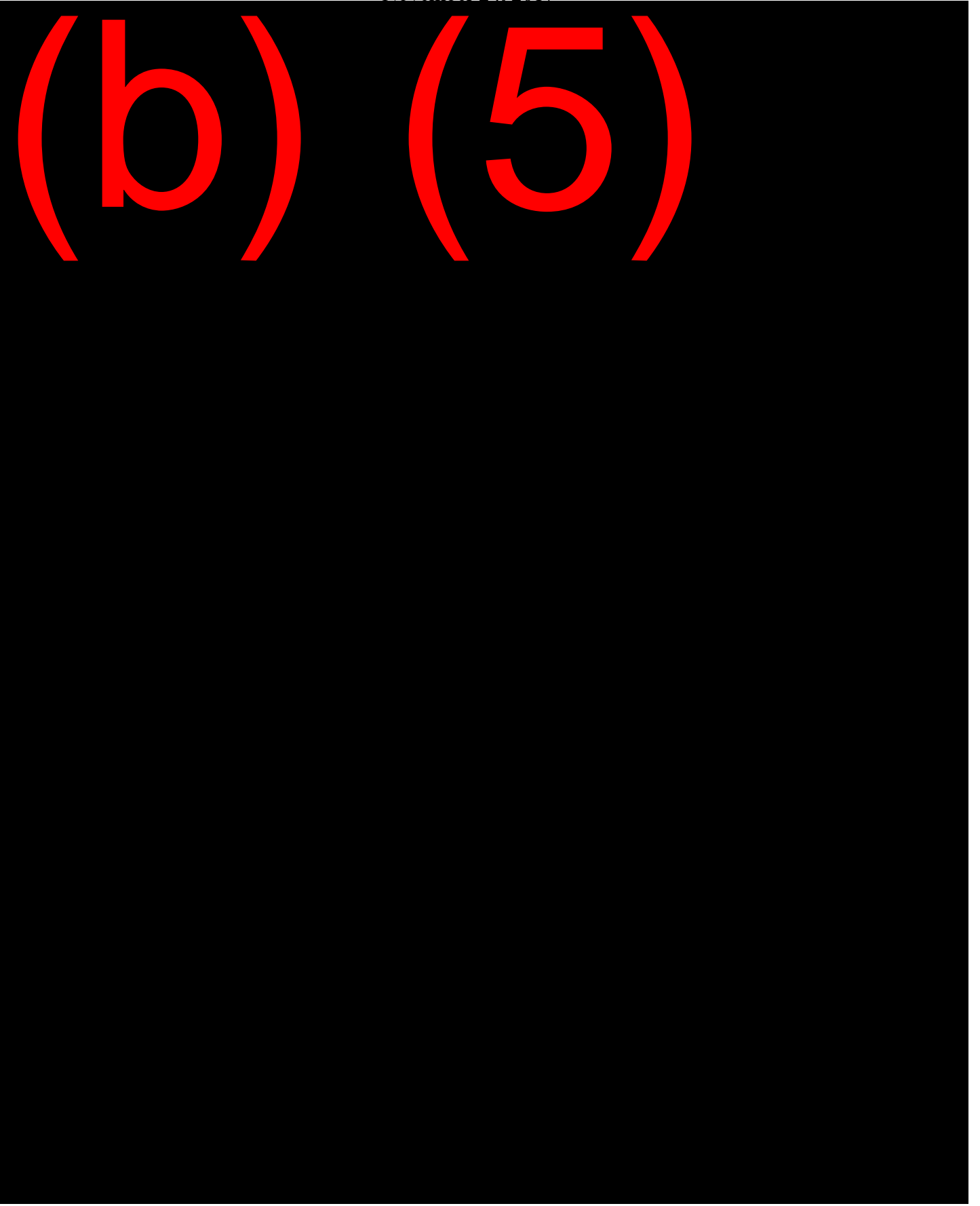
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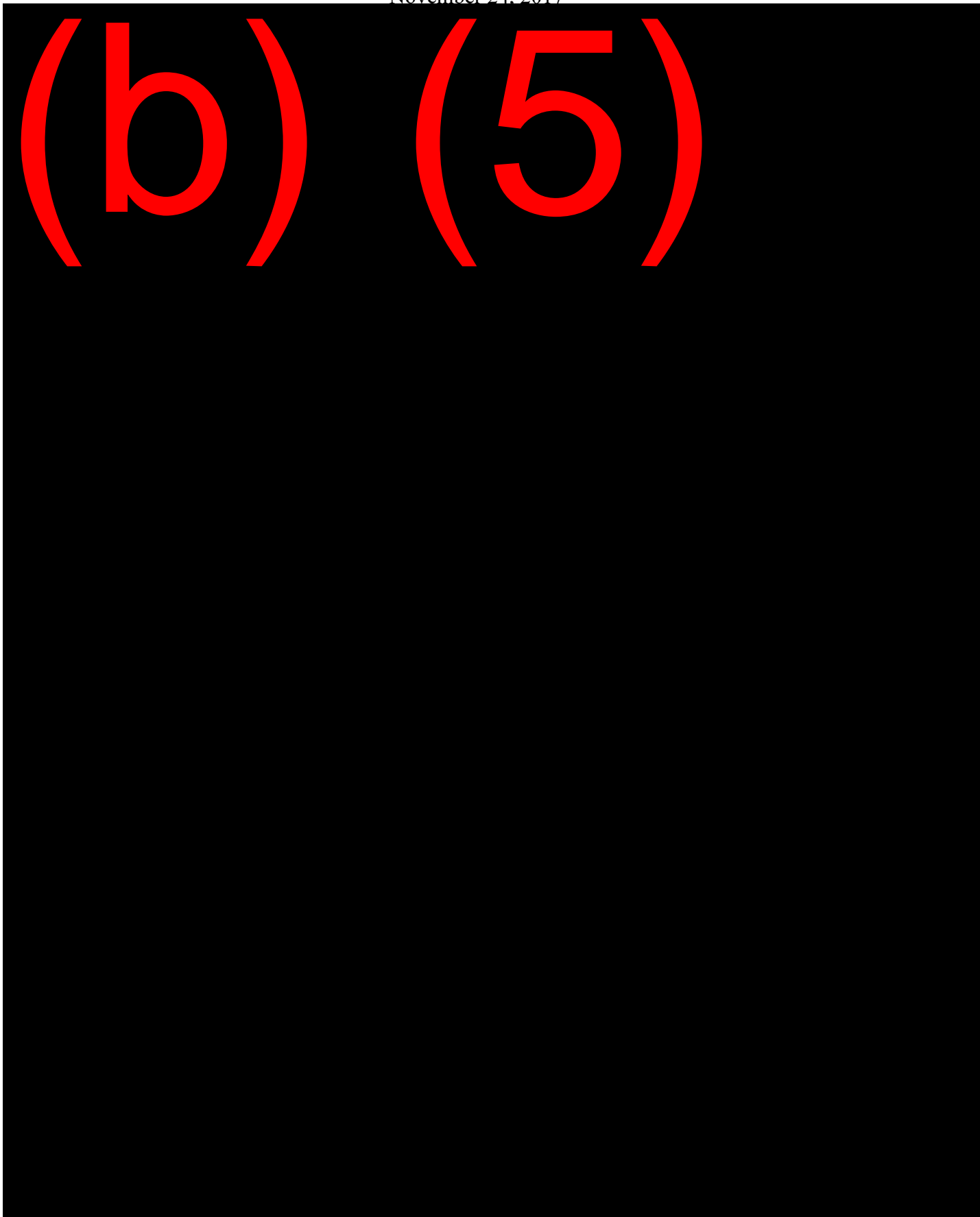
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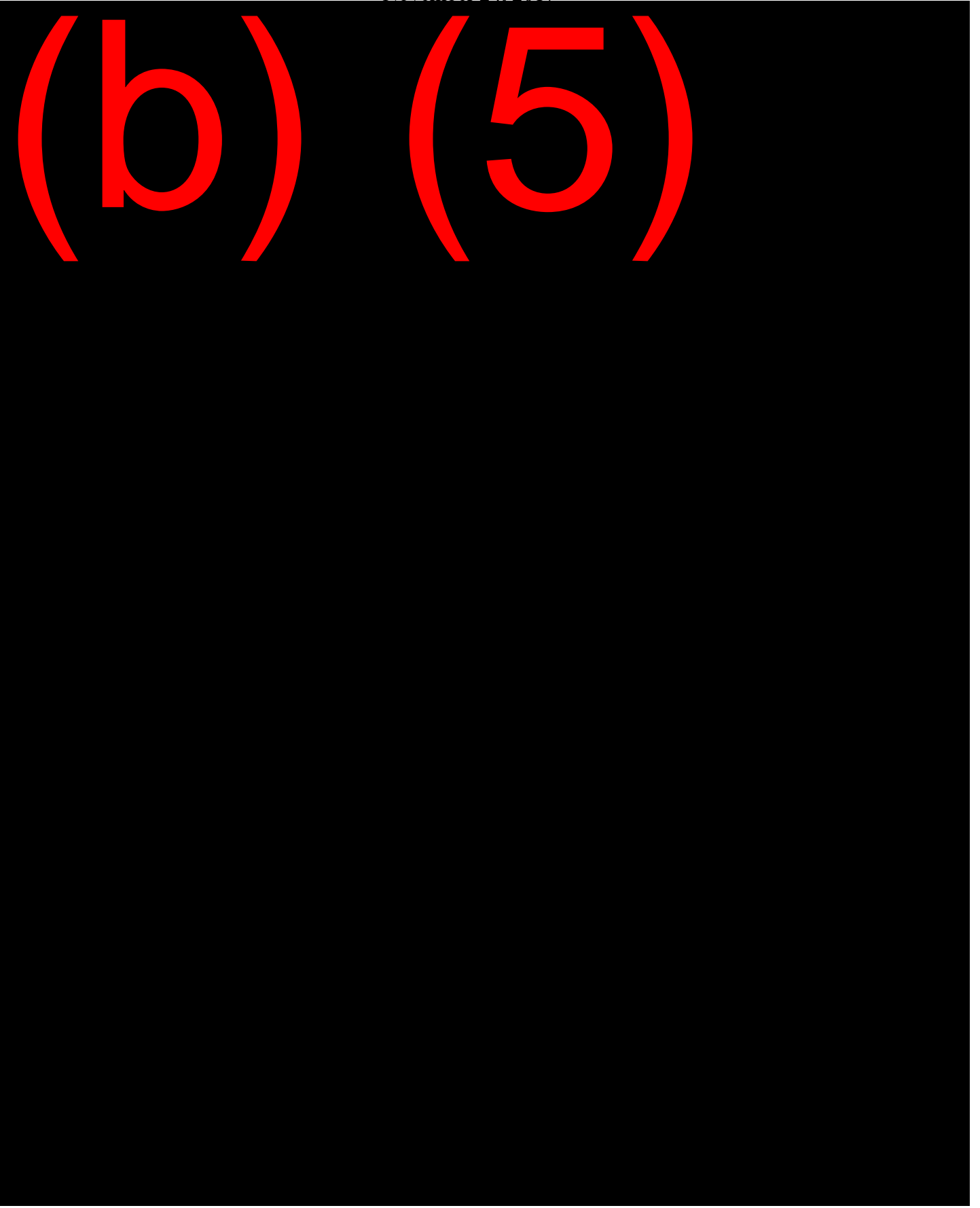
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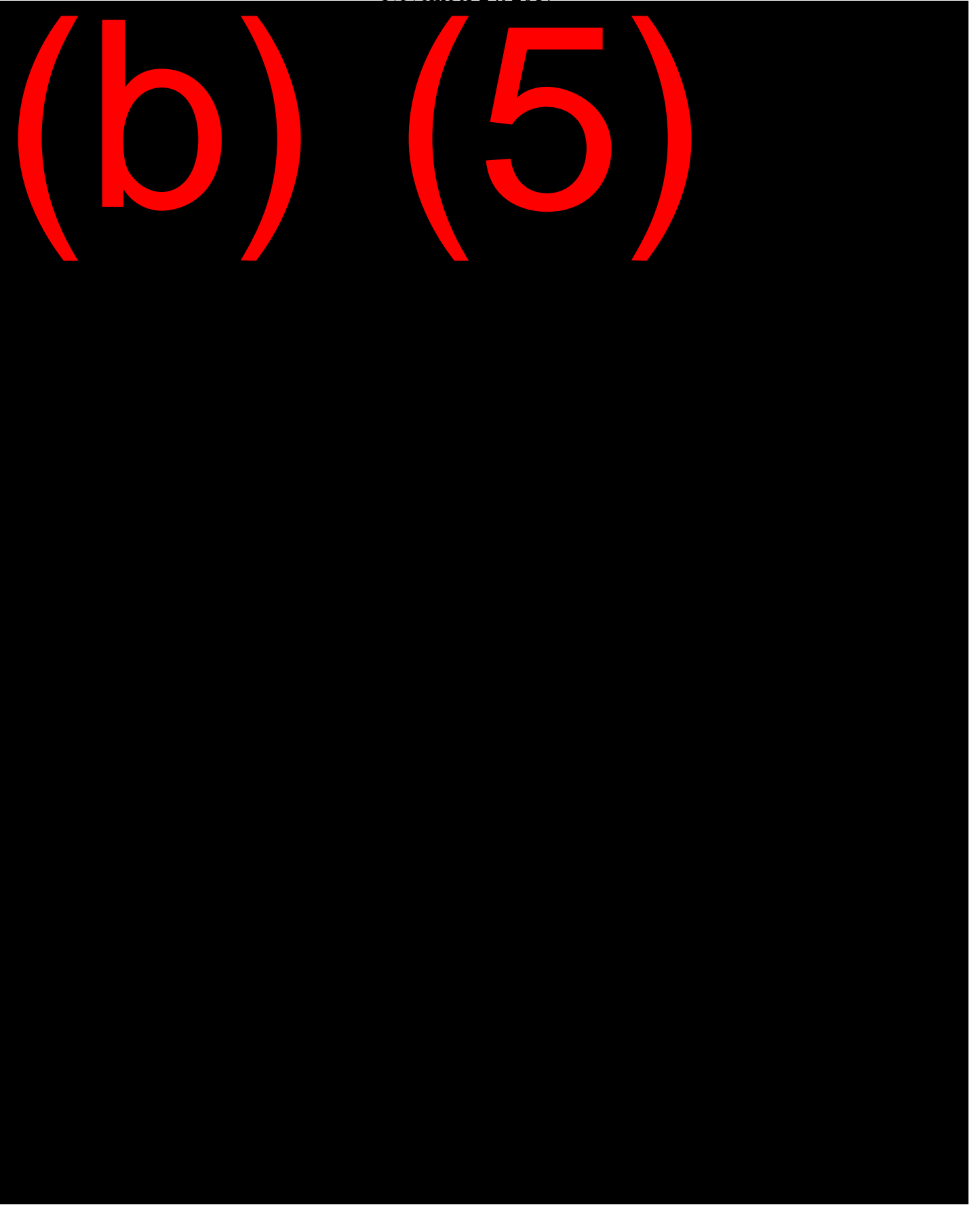
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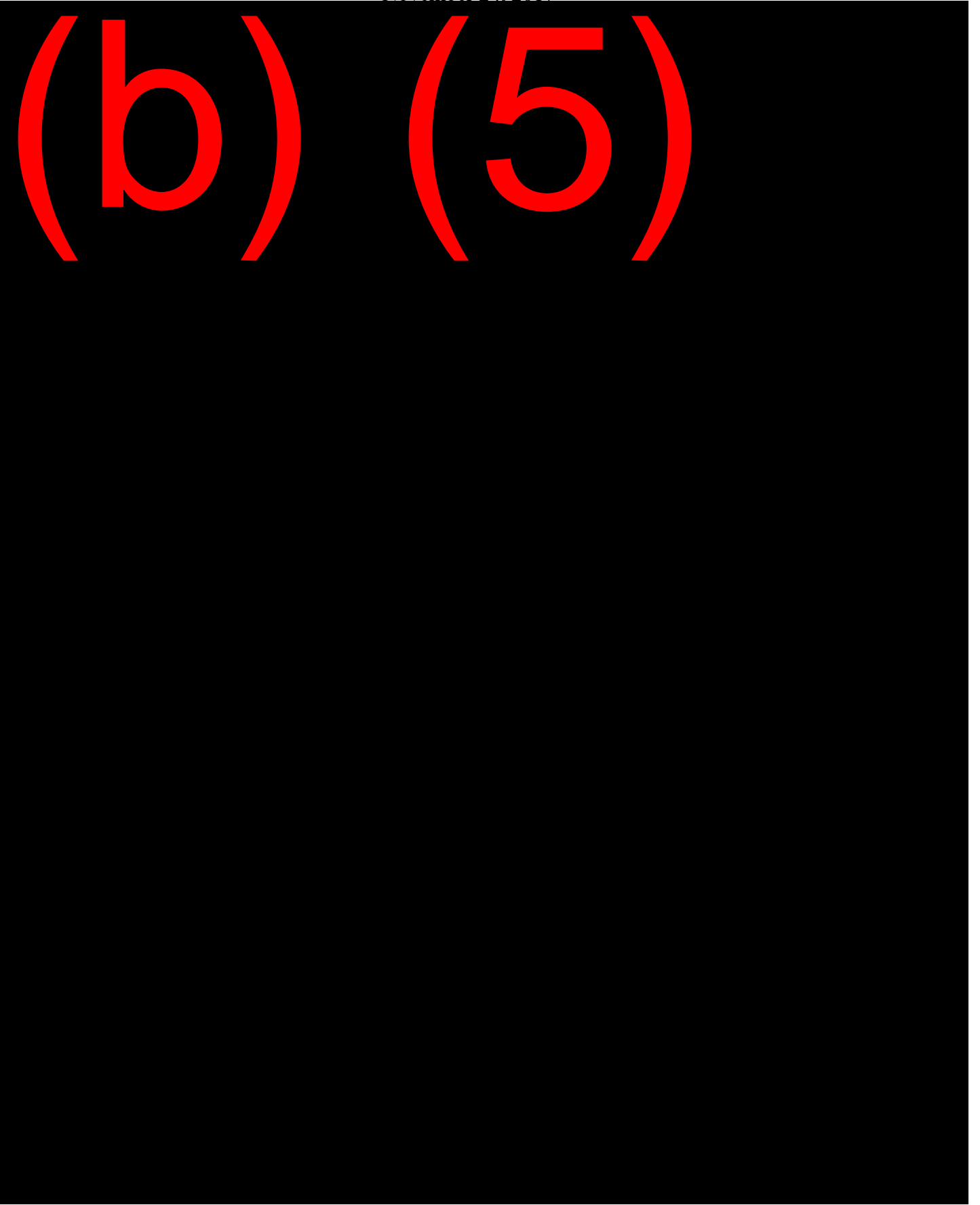
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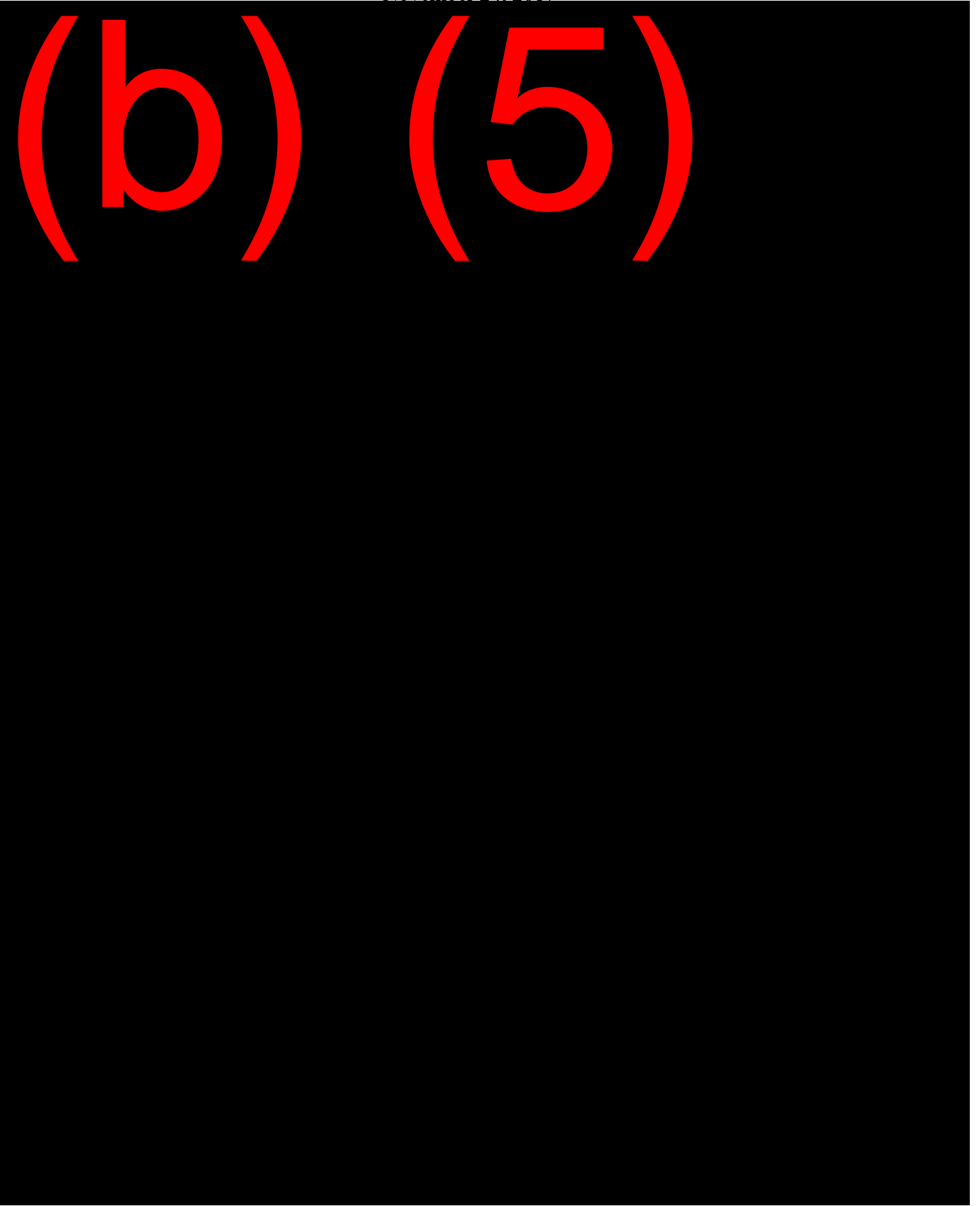
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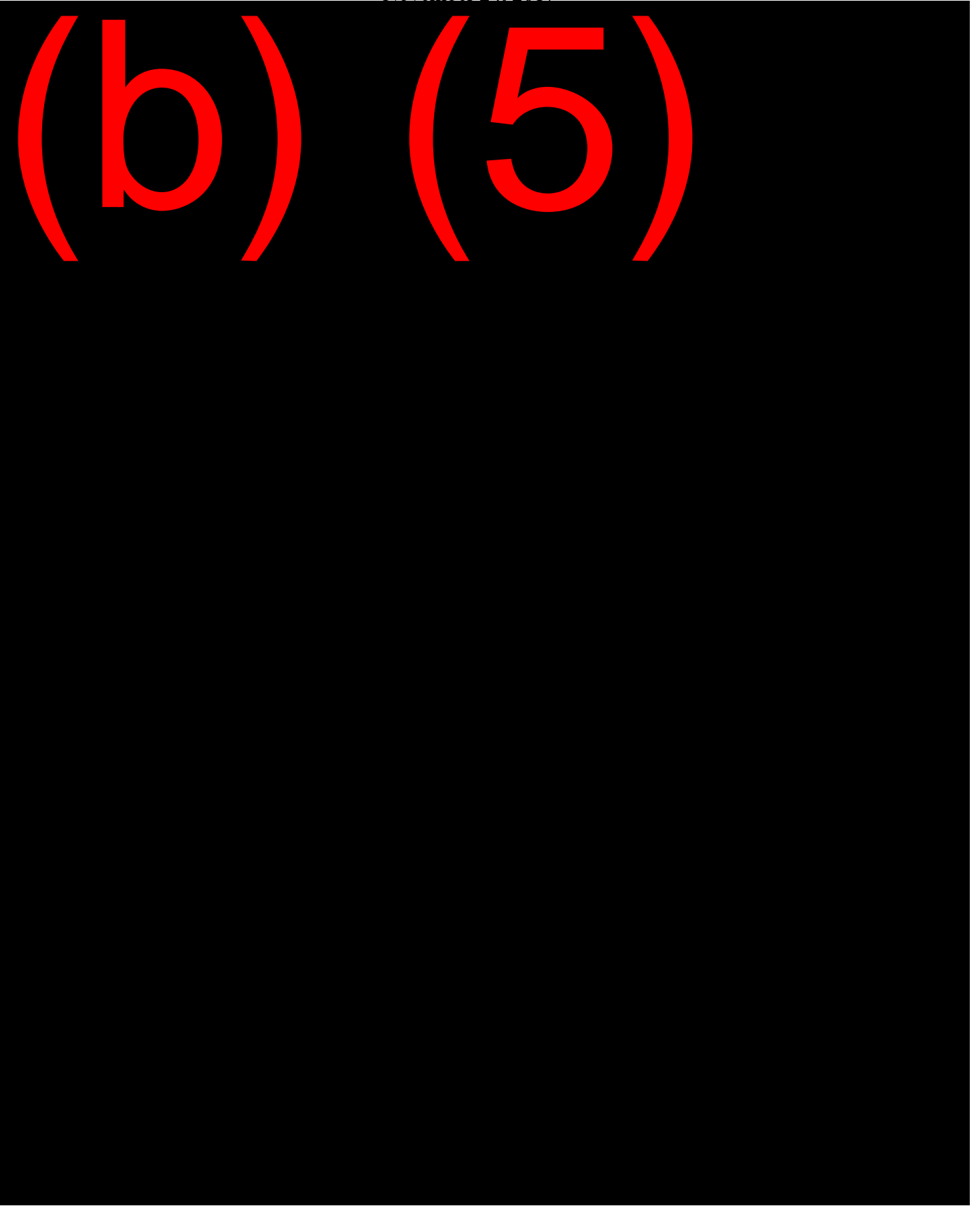


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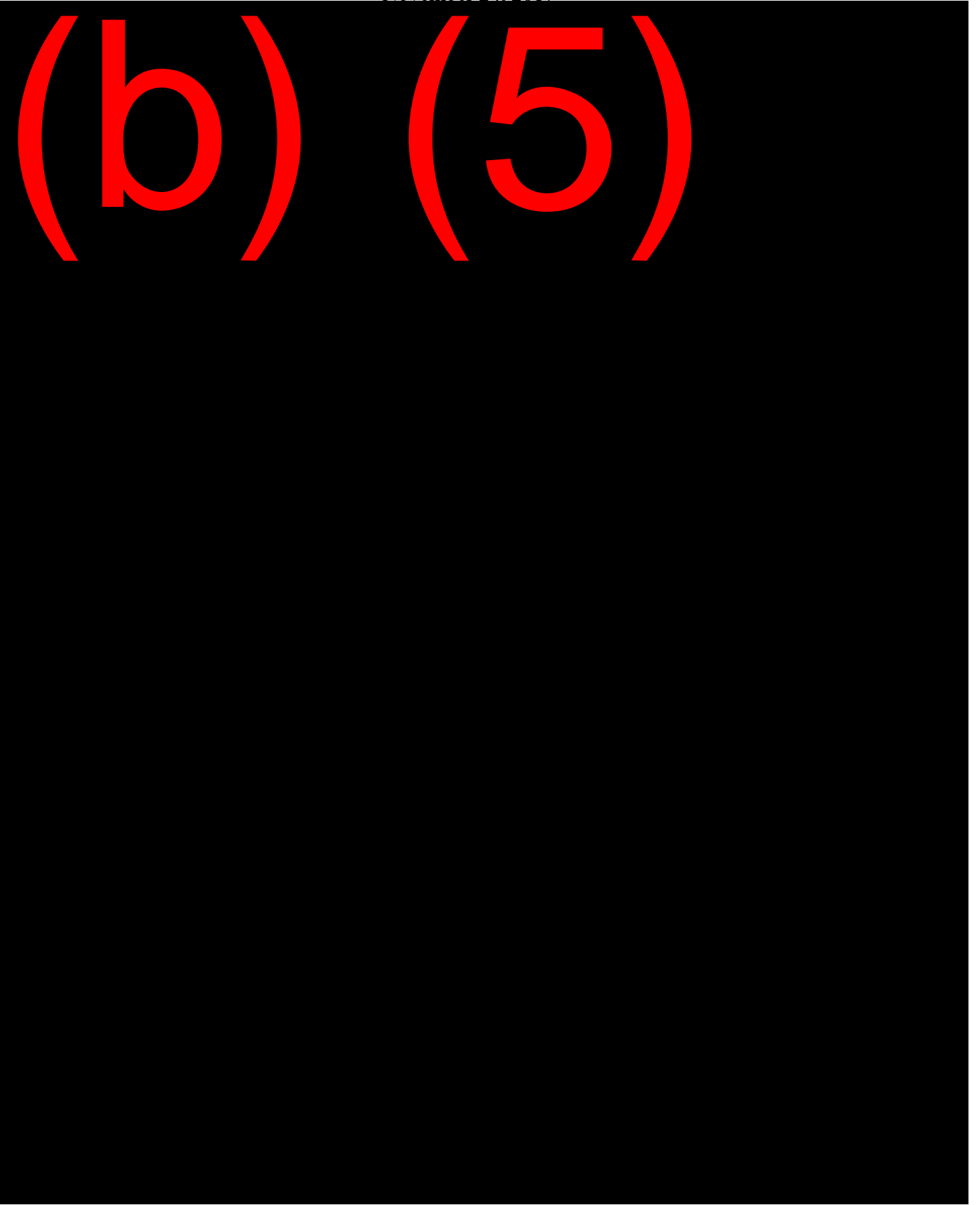




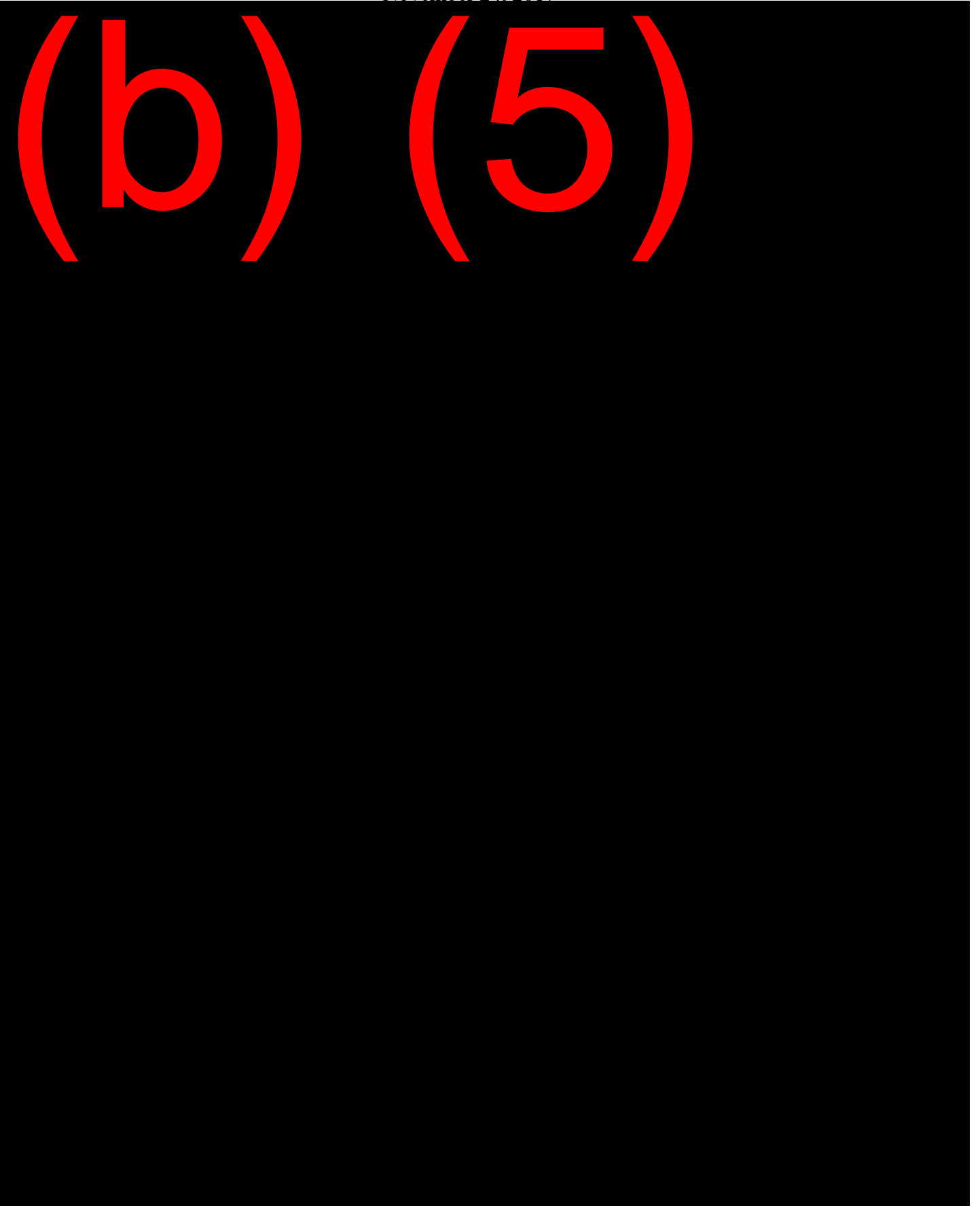
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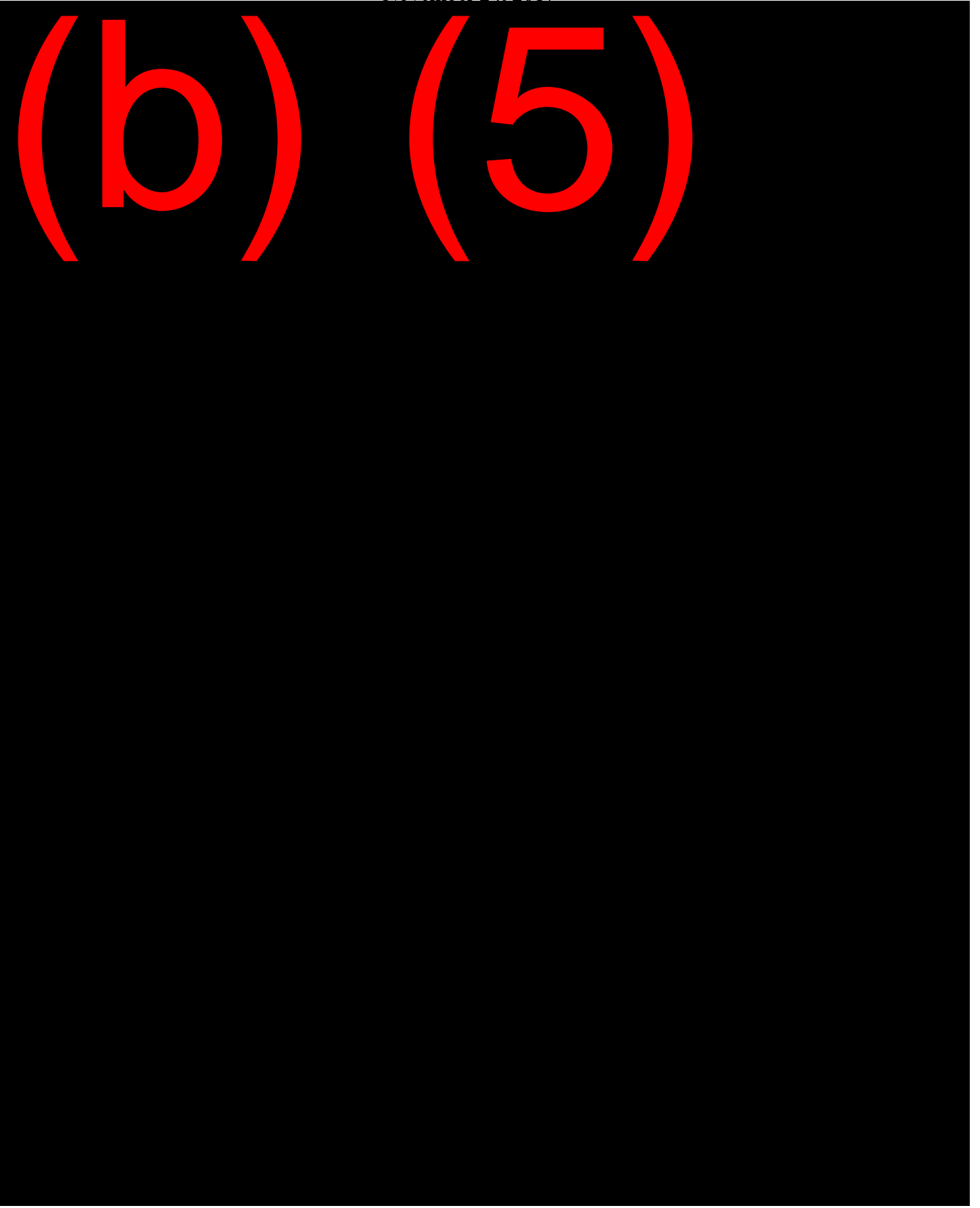
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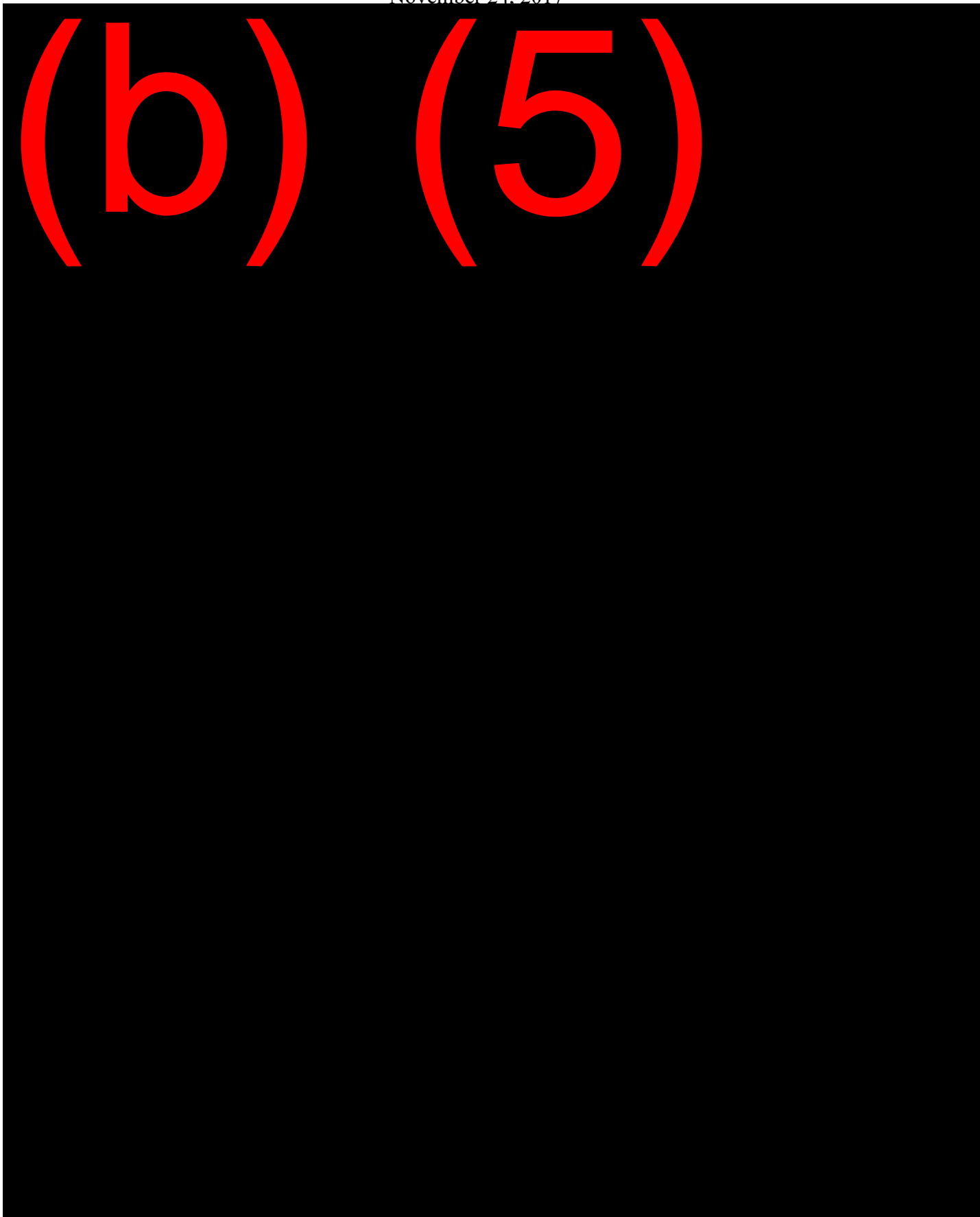
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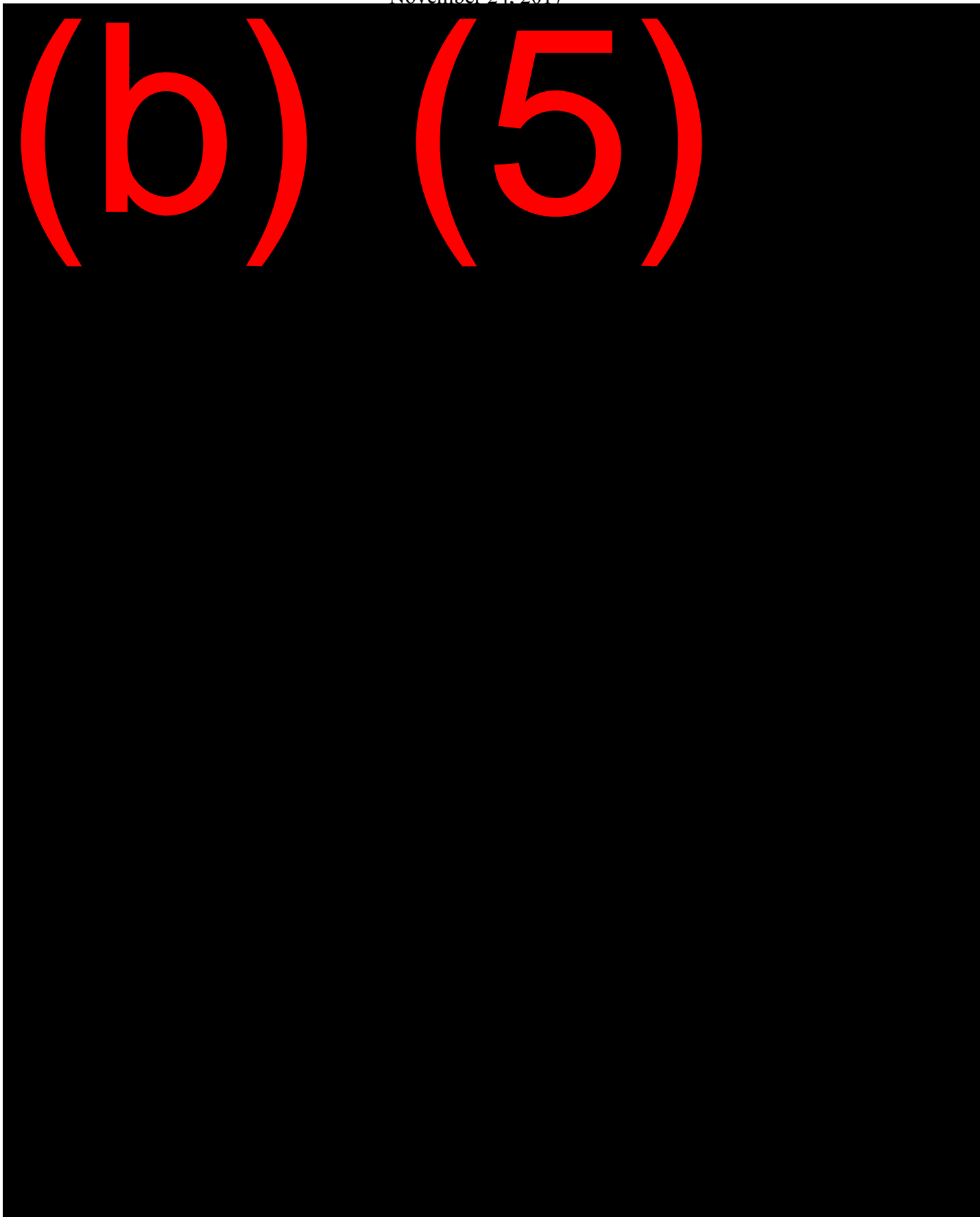
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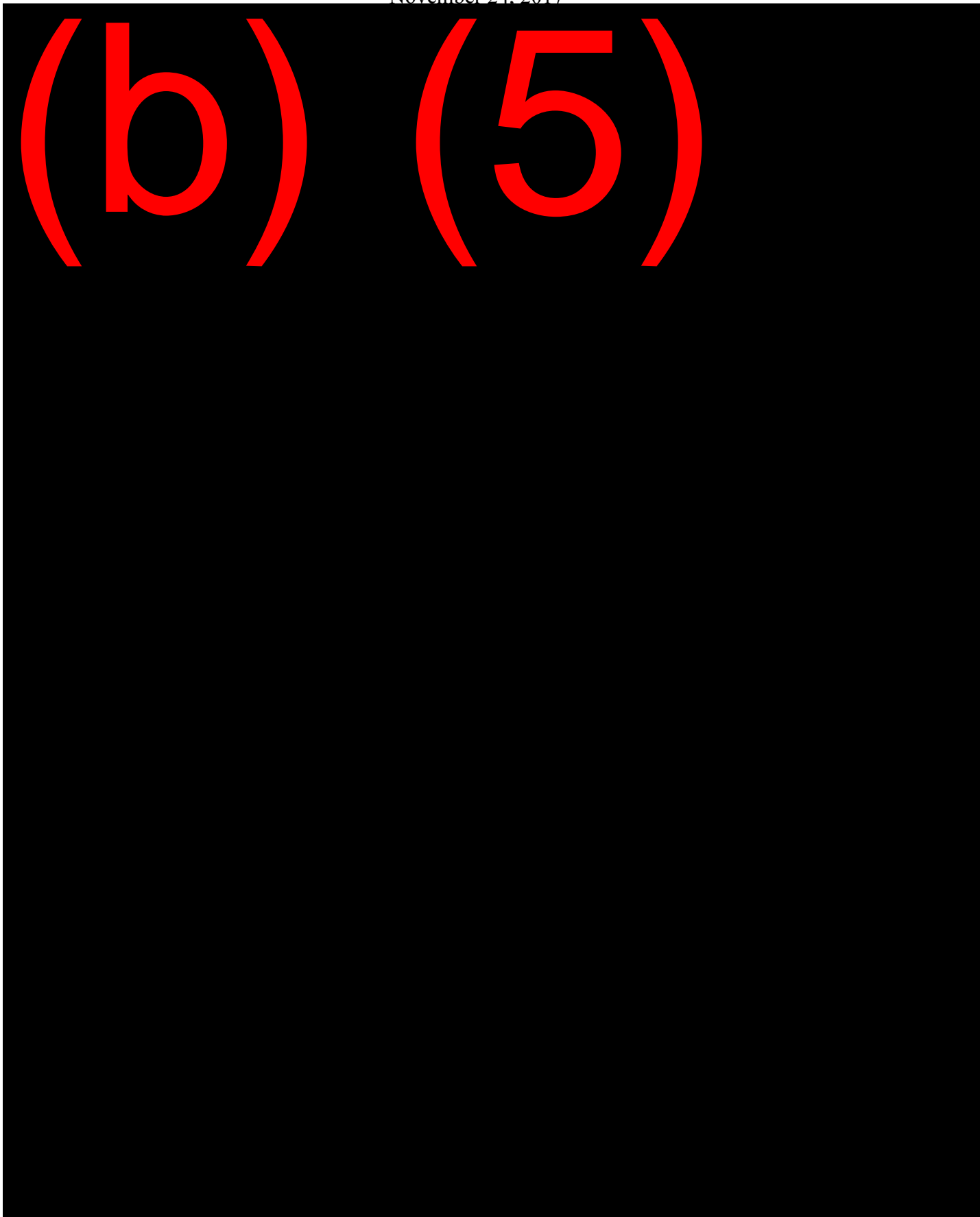
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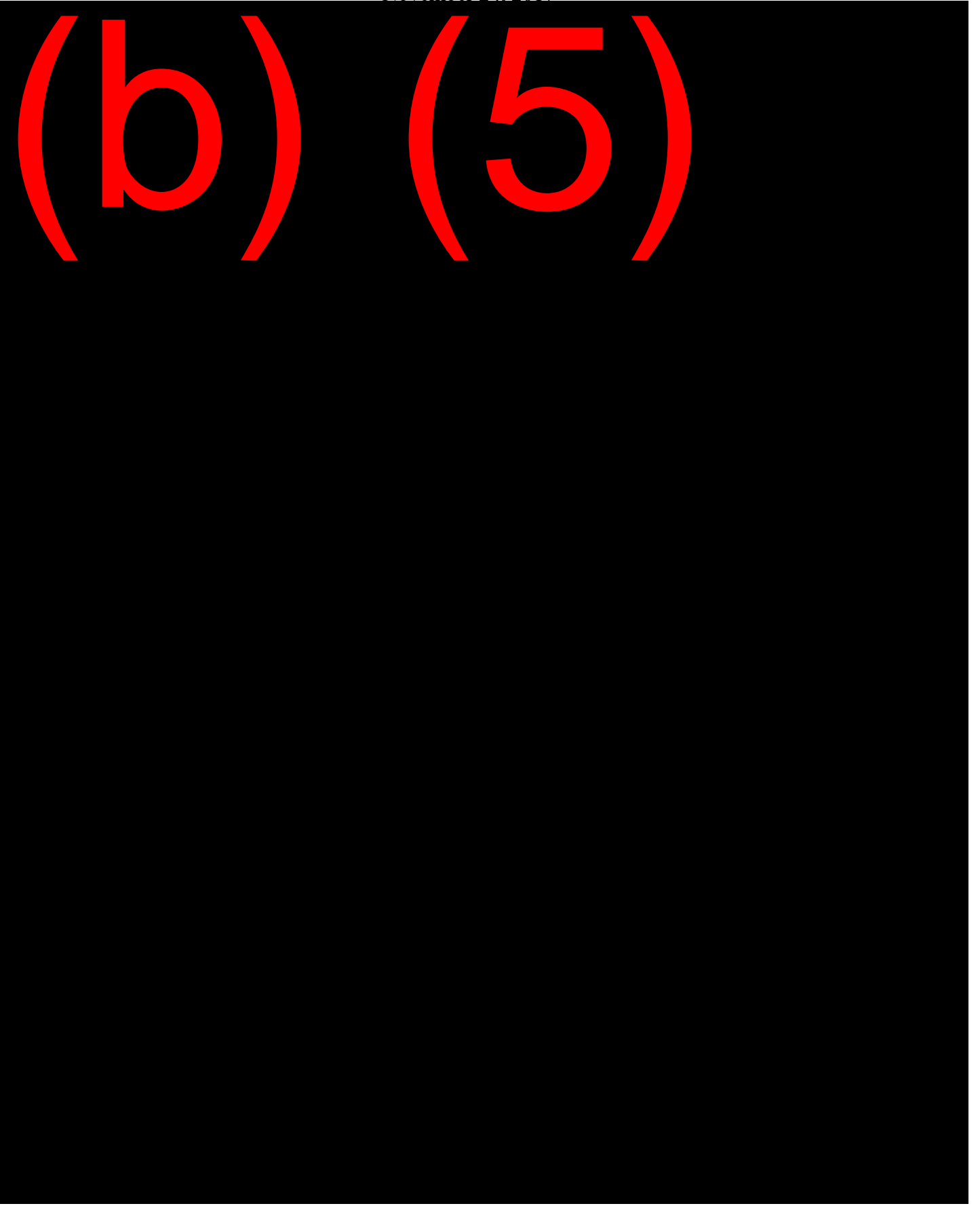
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DRAFT – Privileged and Confidential  
November 24, 2017

M-

Memorandum

To: Director, Bureau of Land Management

From: Solicitor

Subject: Reversal of M-37036, “Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)”

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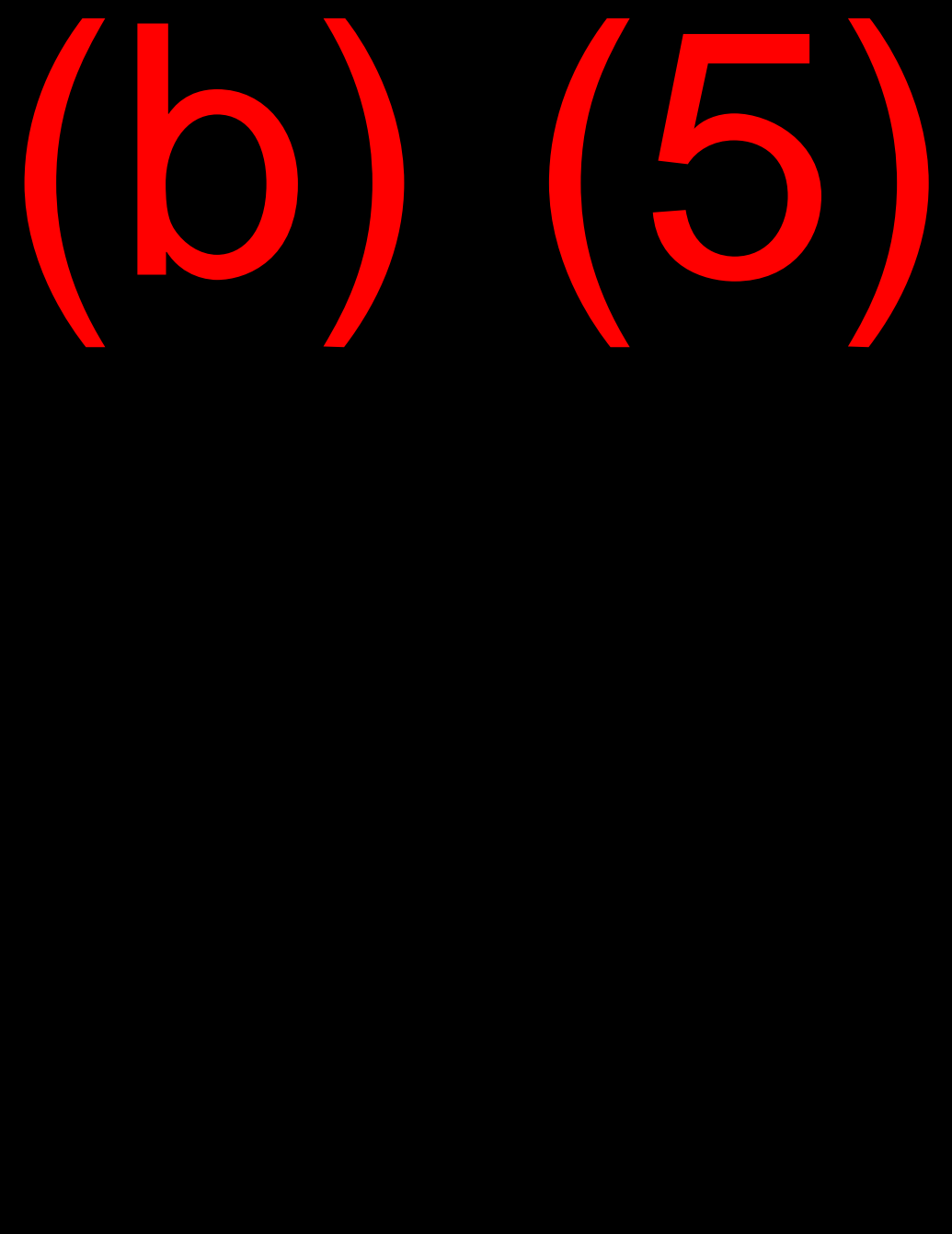
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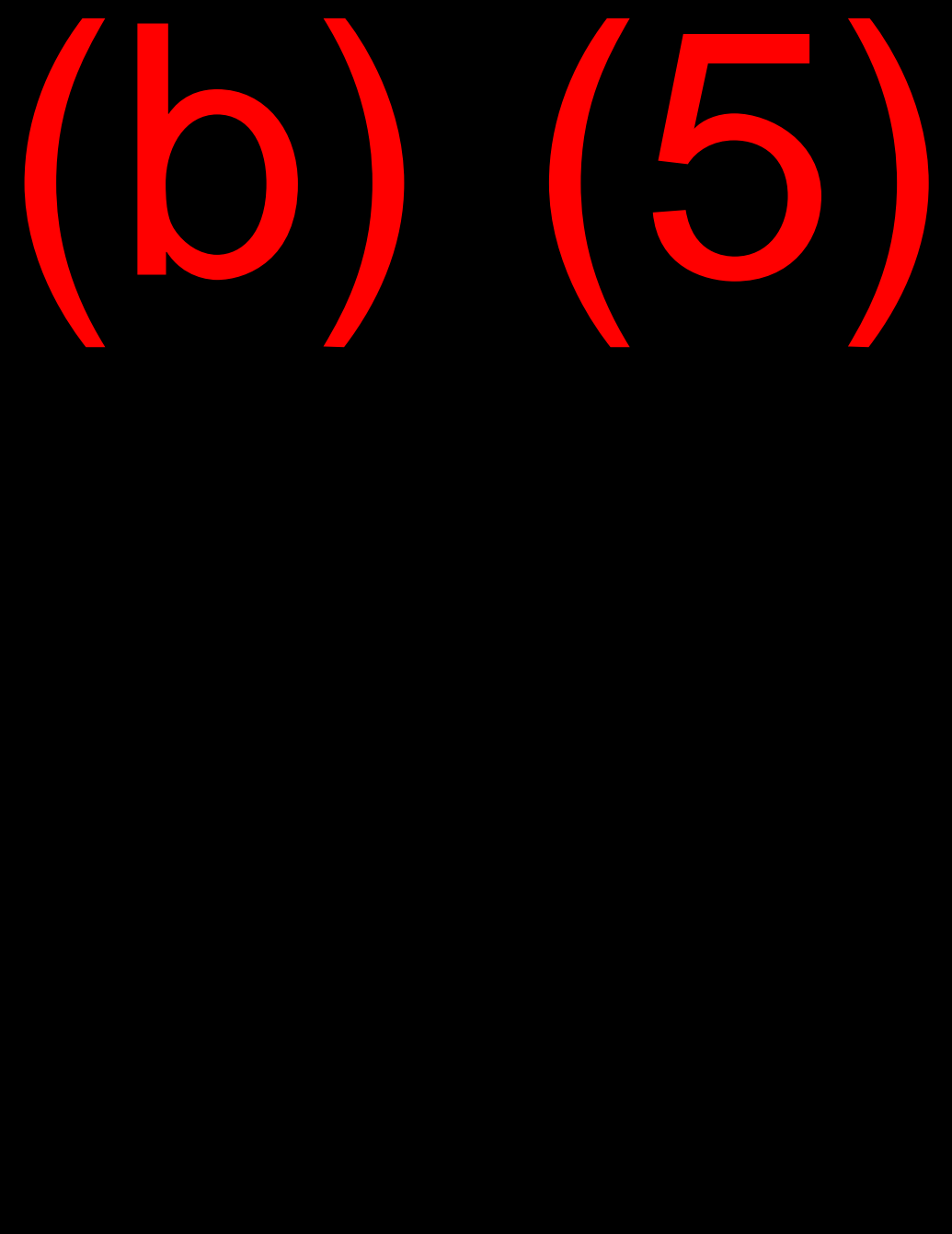
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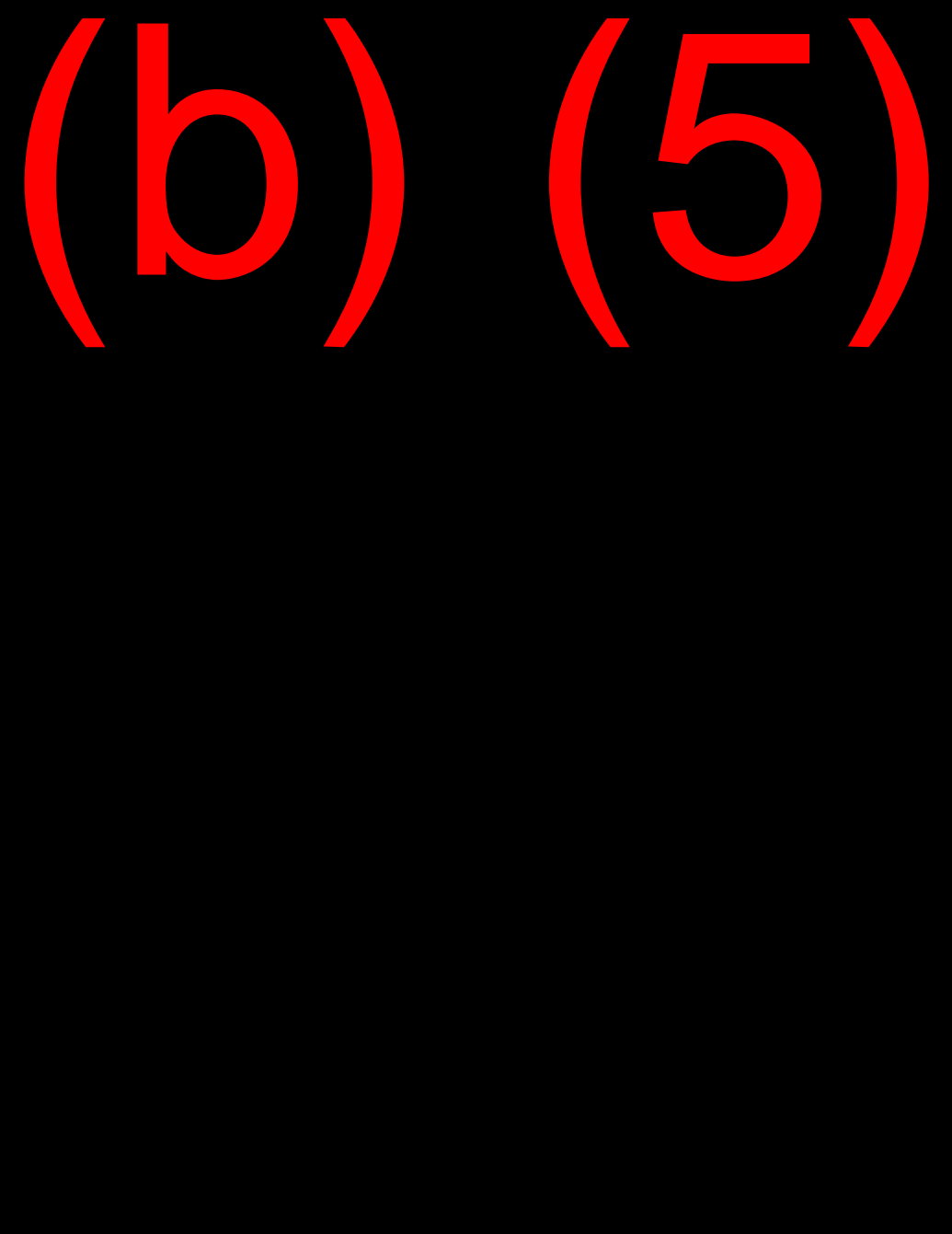
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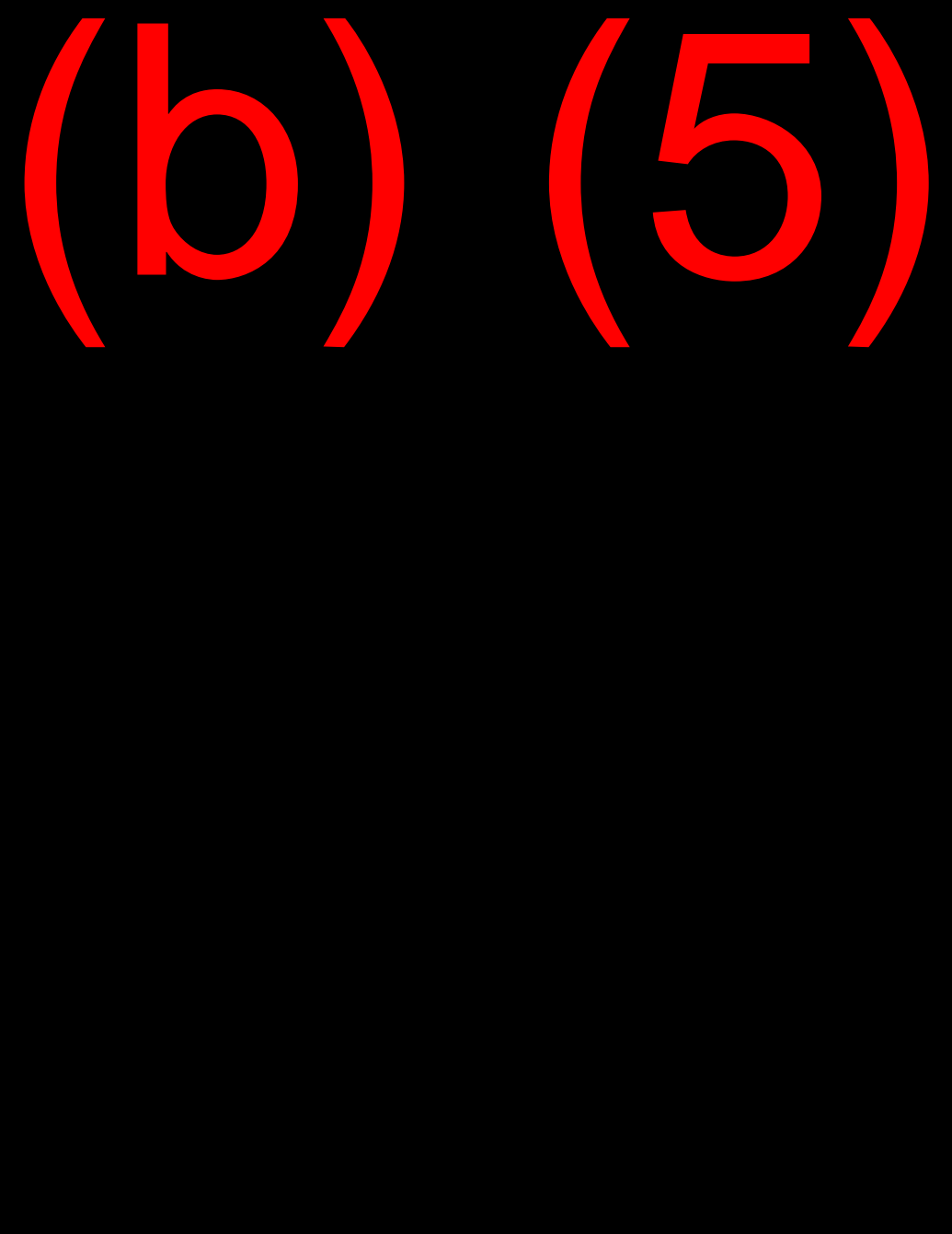
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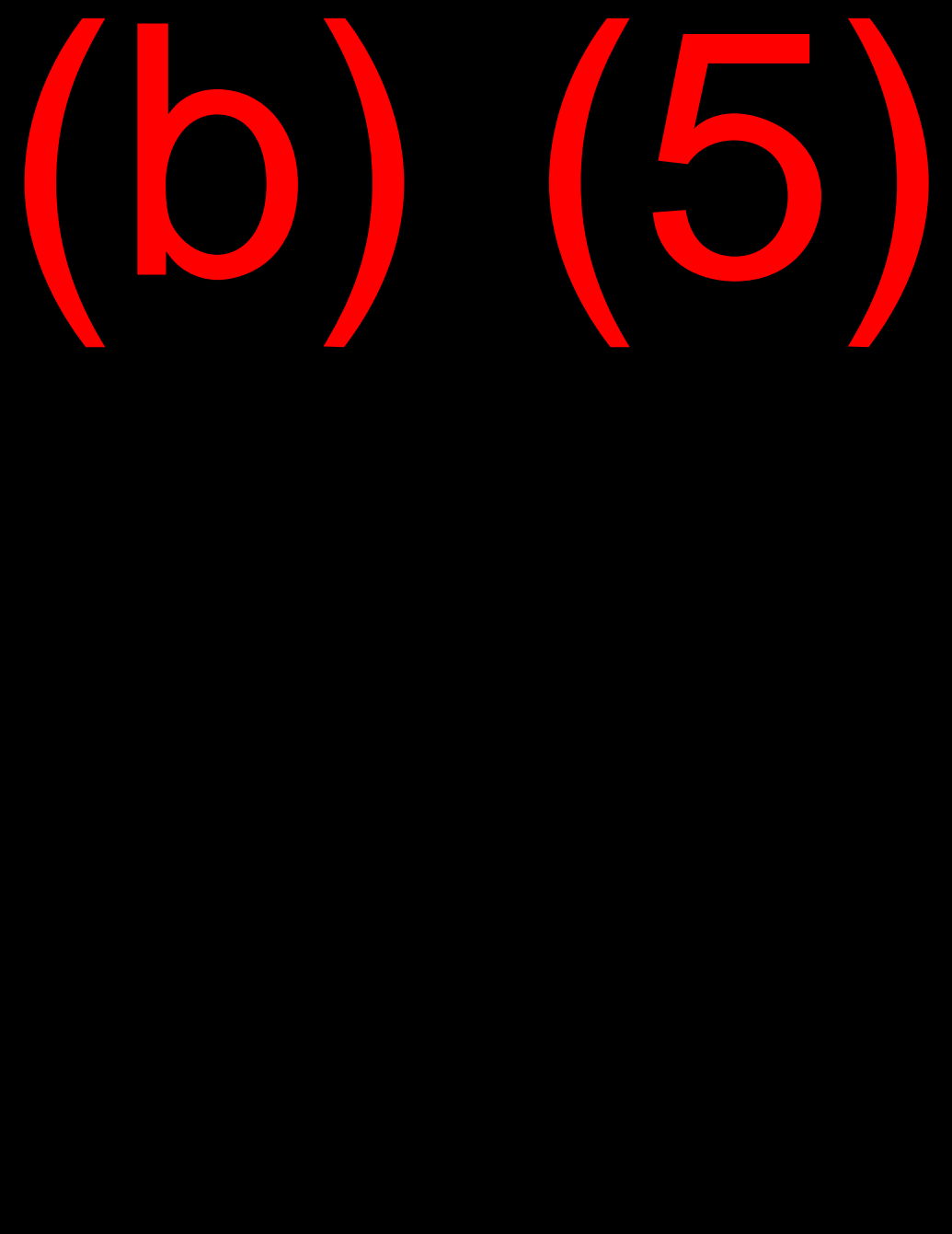
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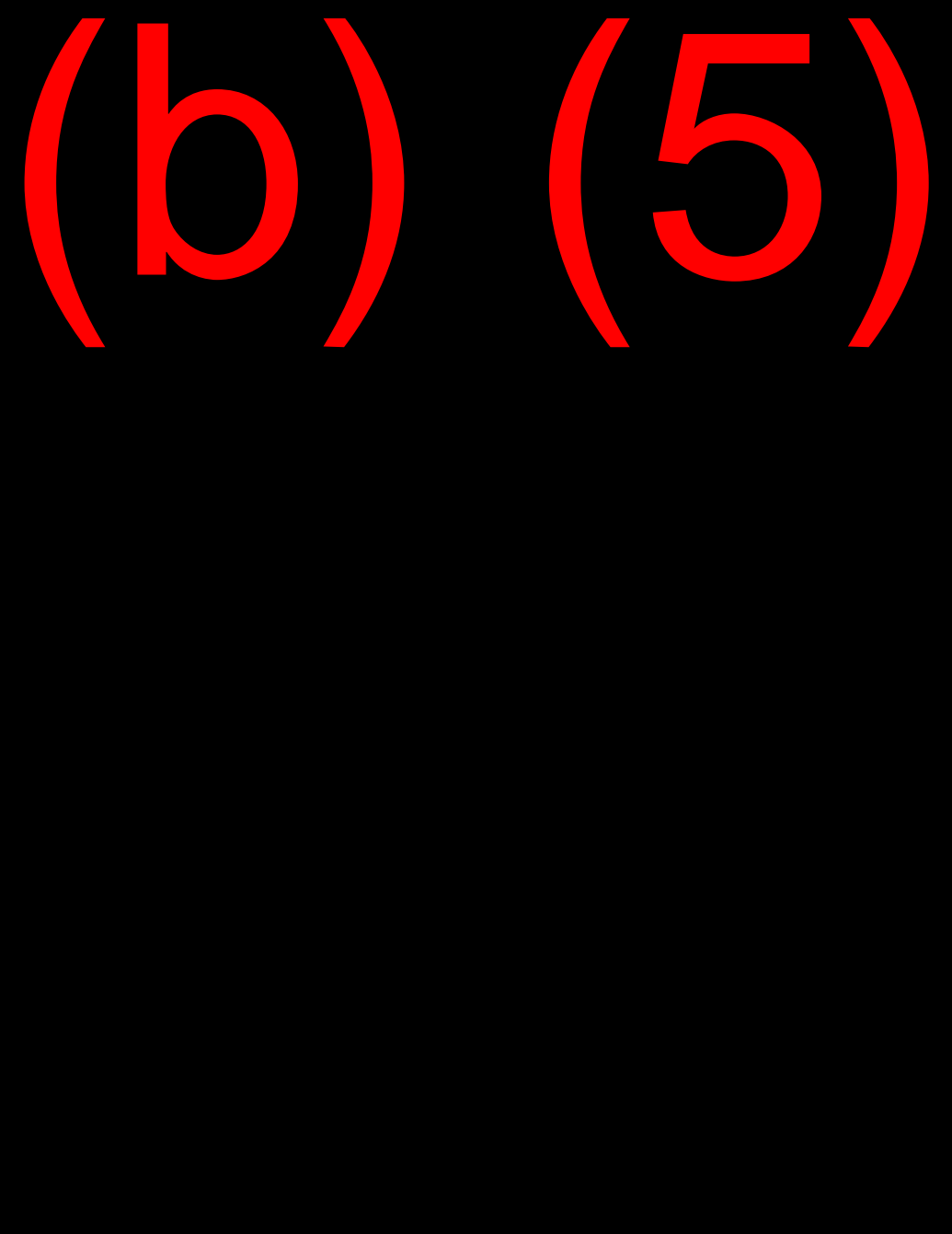


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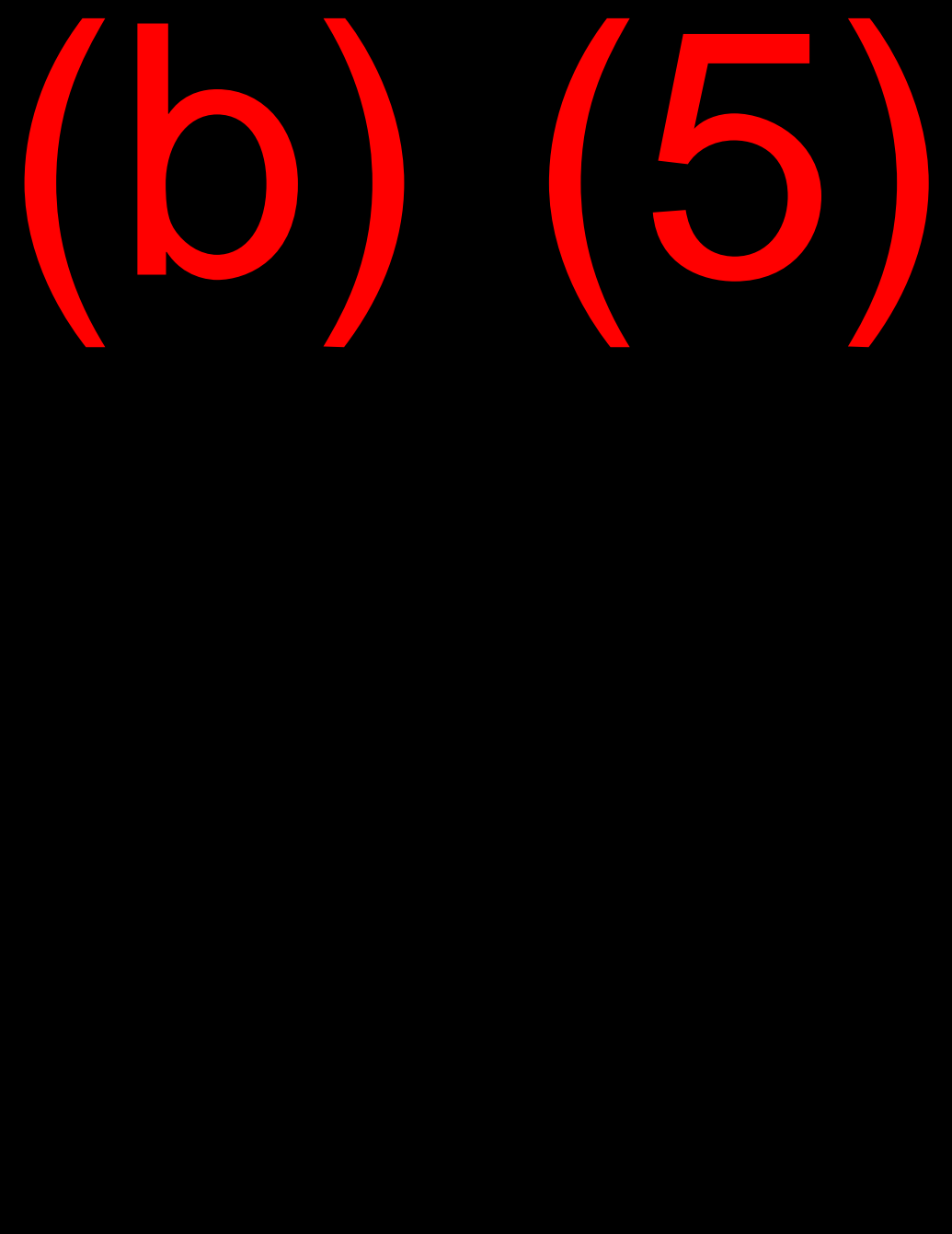
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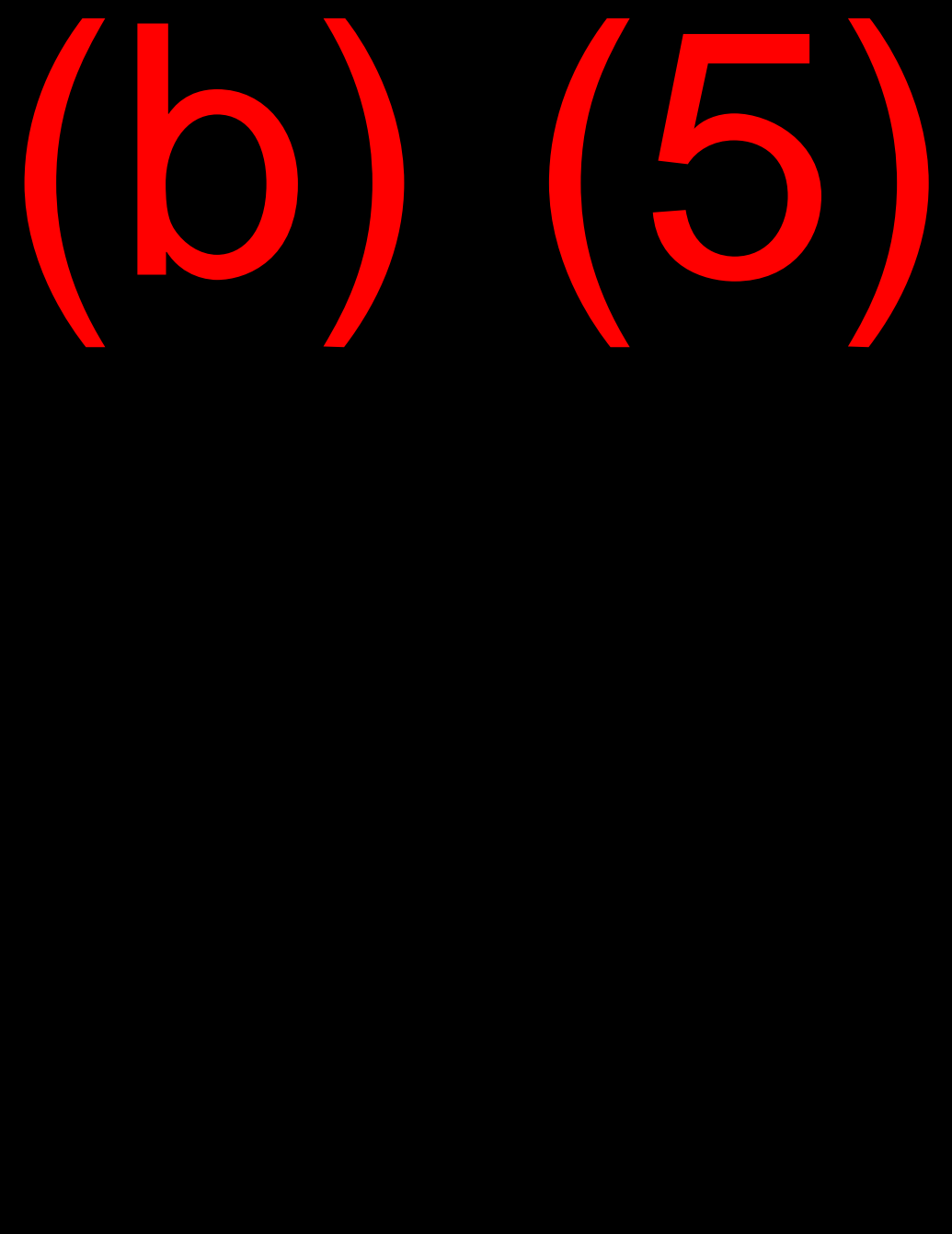
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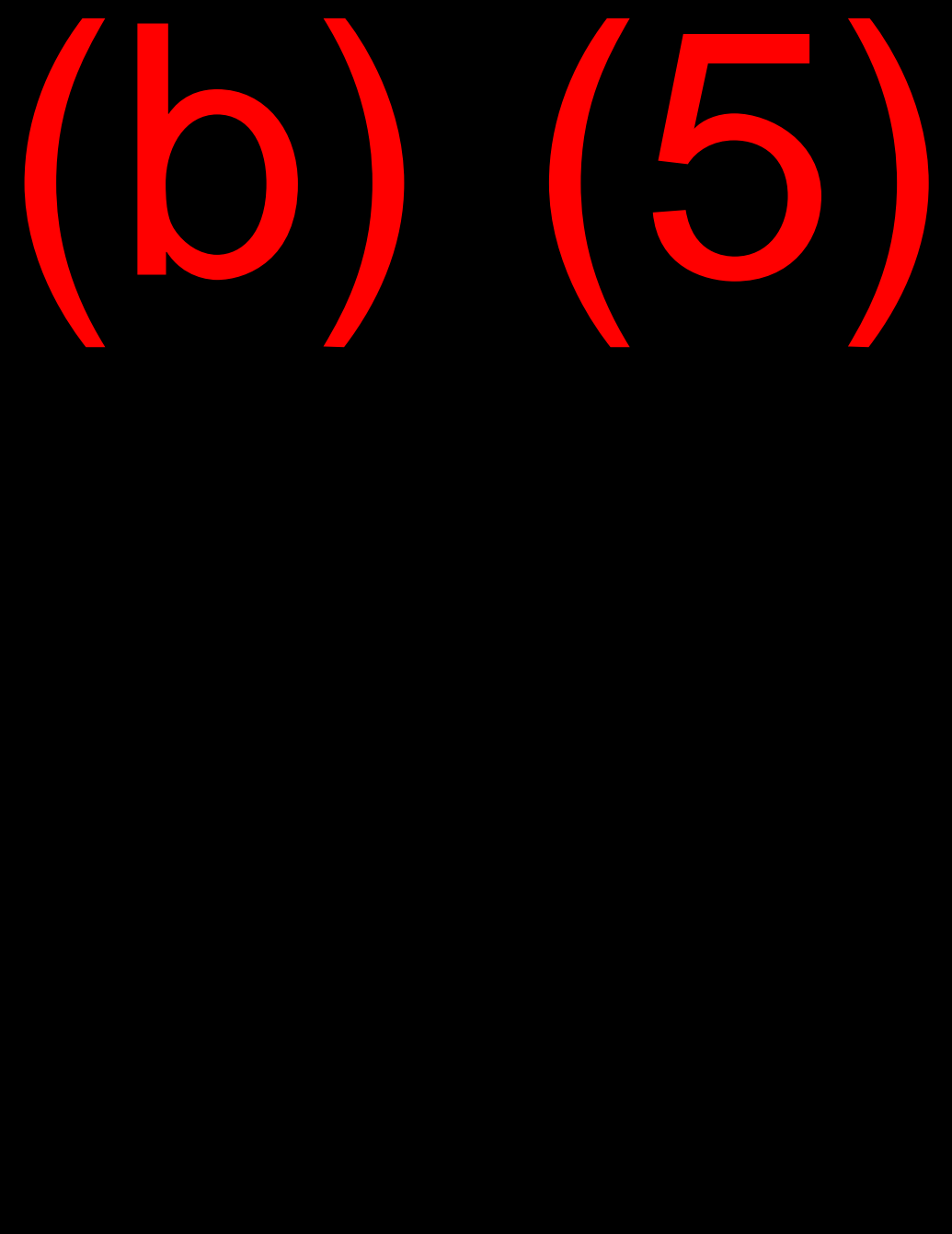
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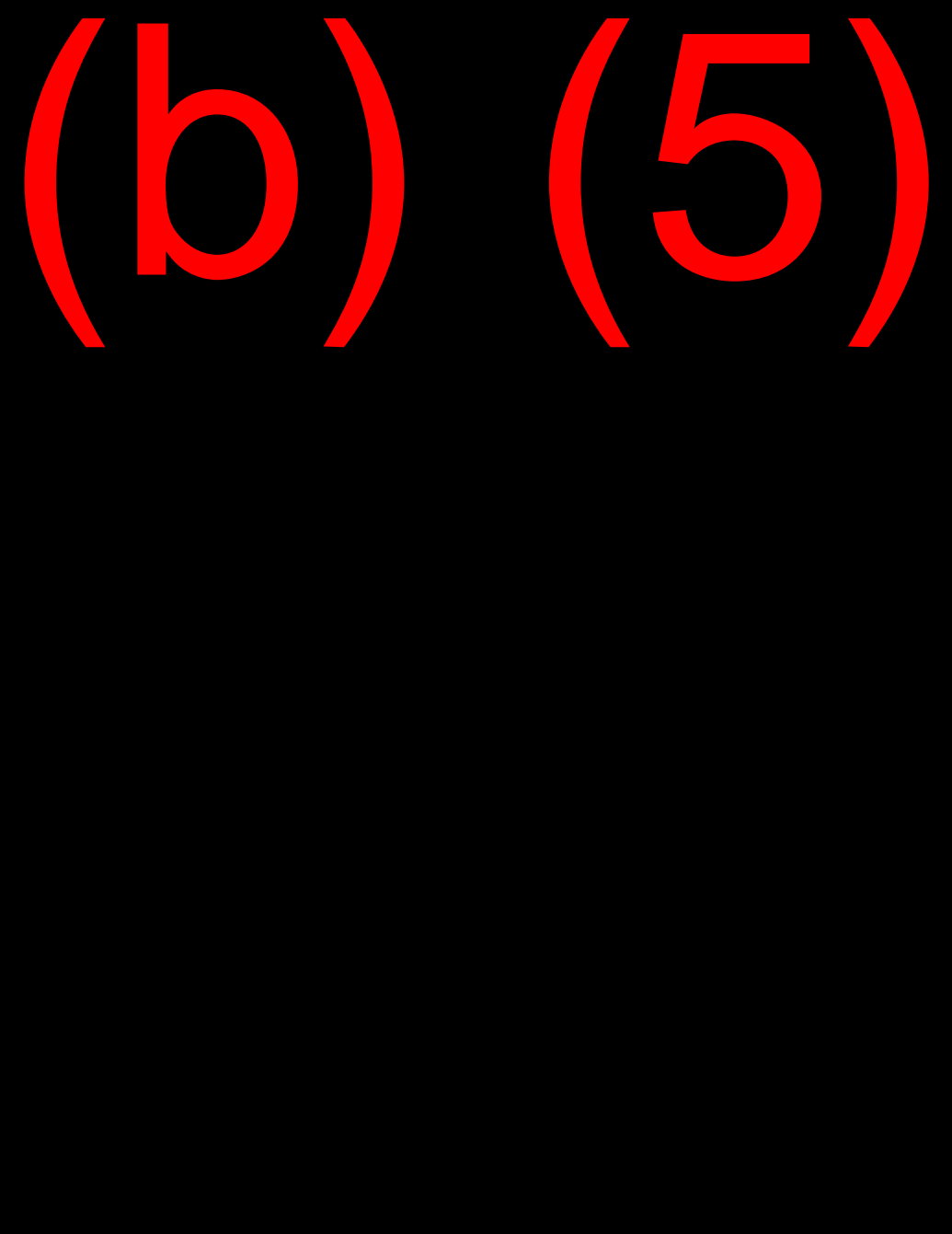
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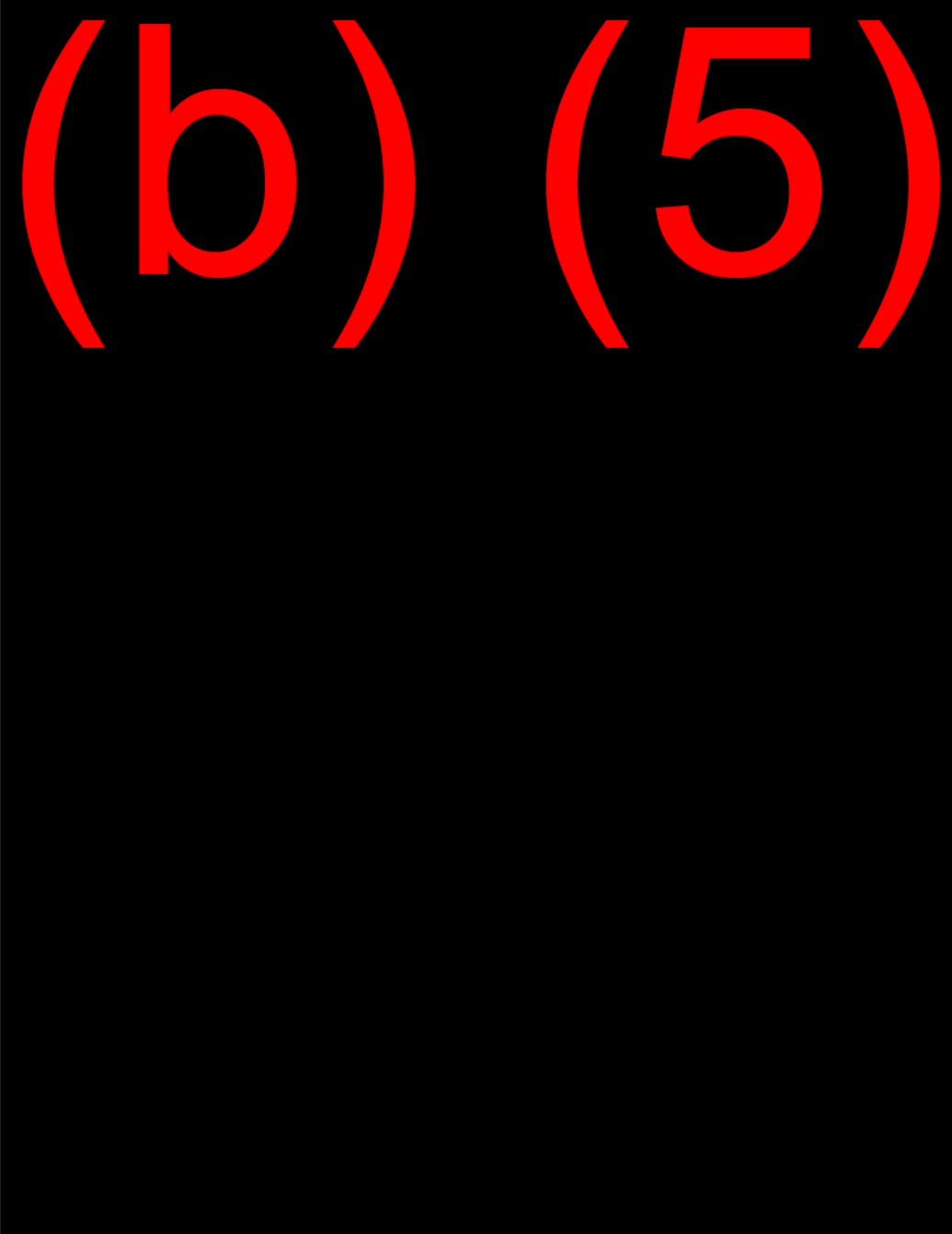
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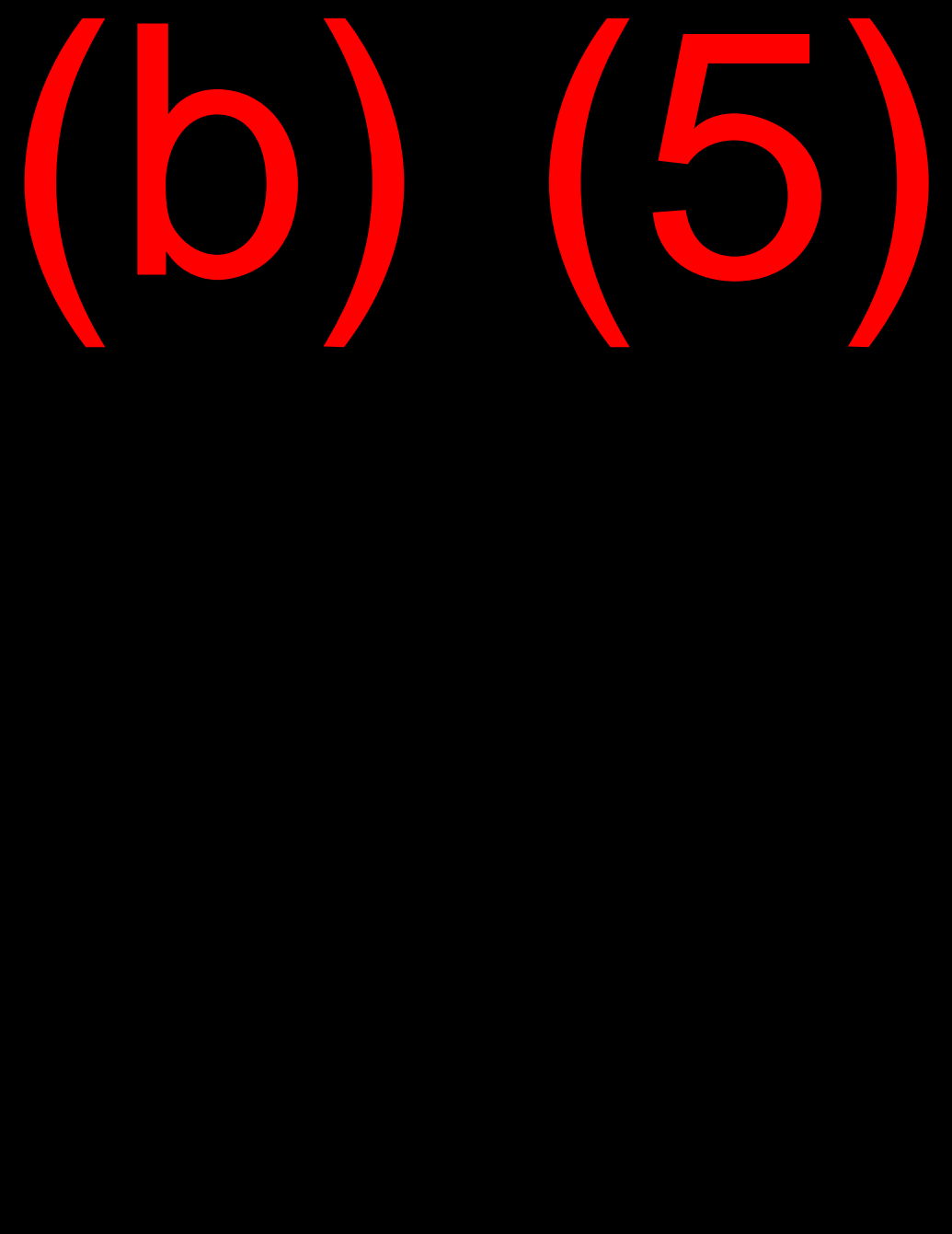


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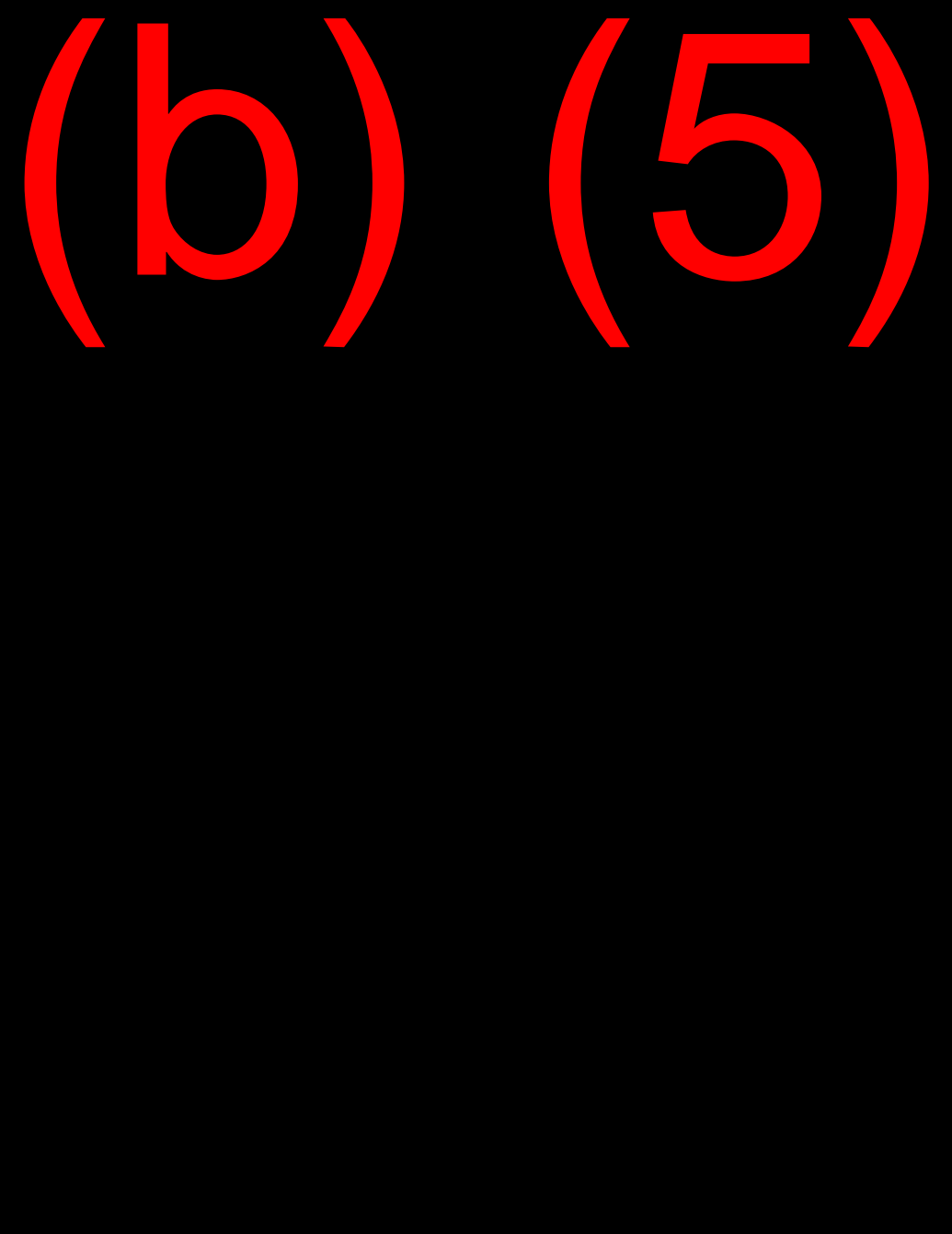
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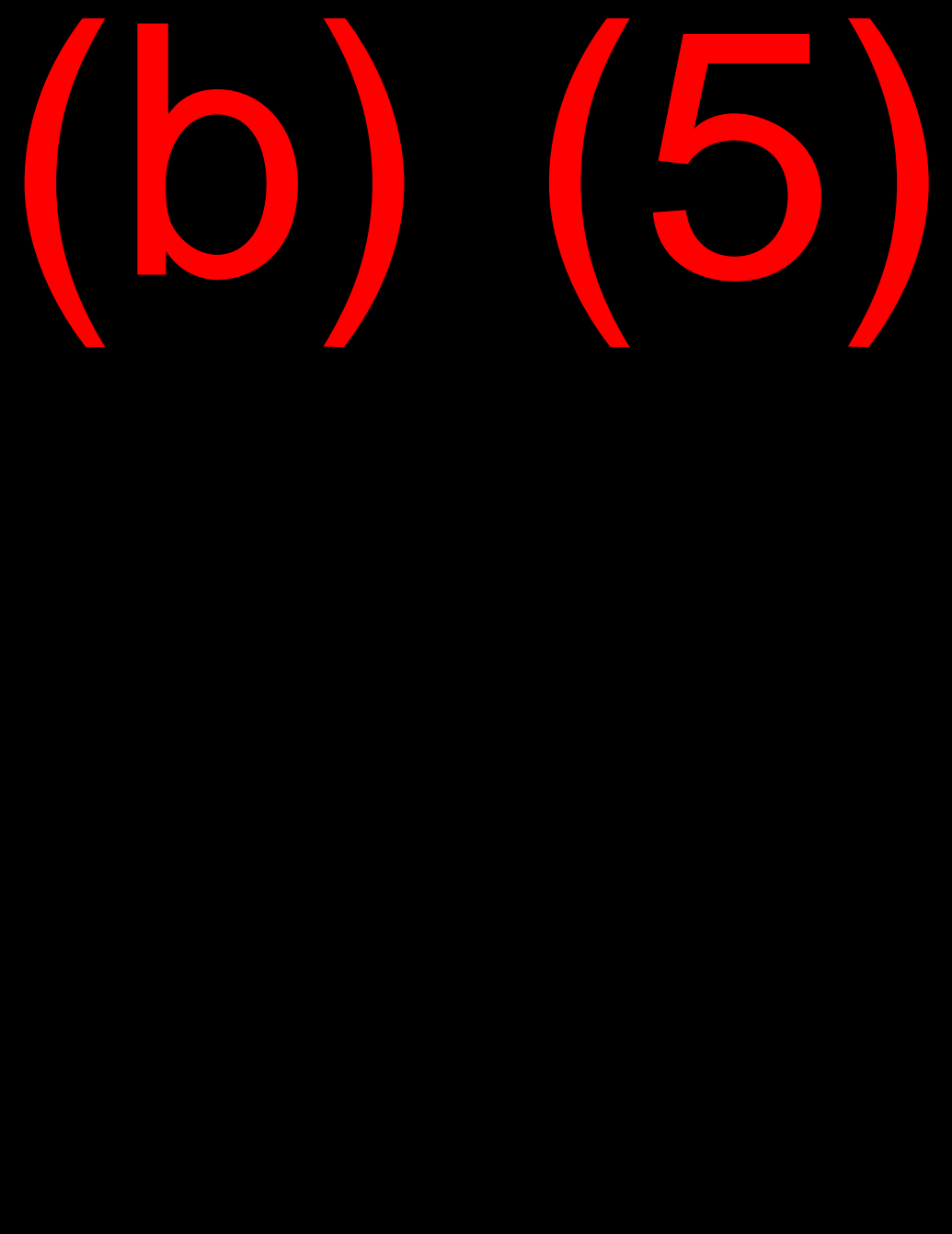




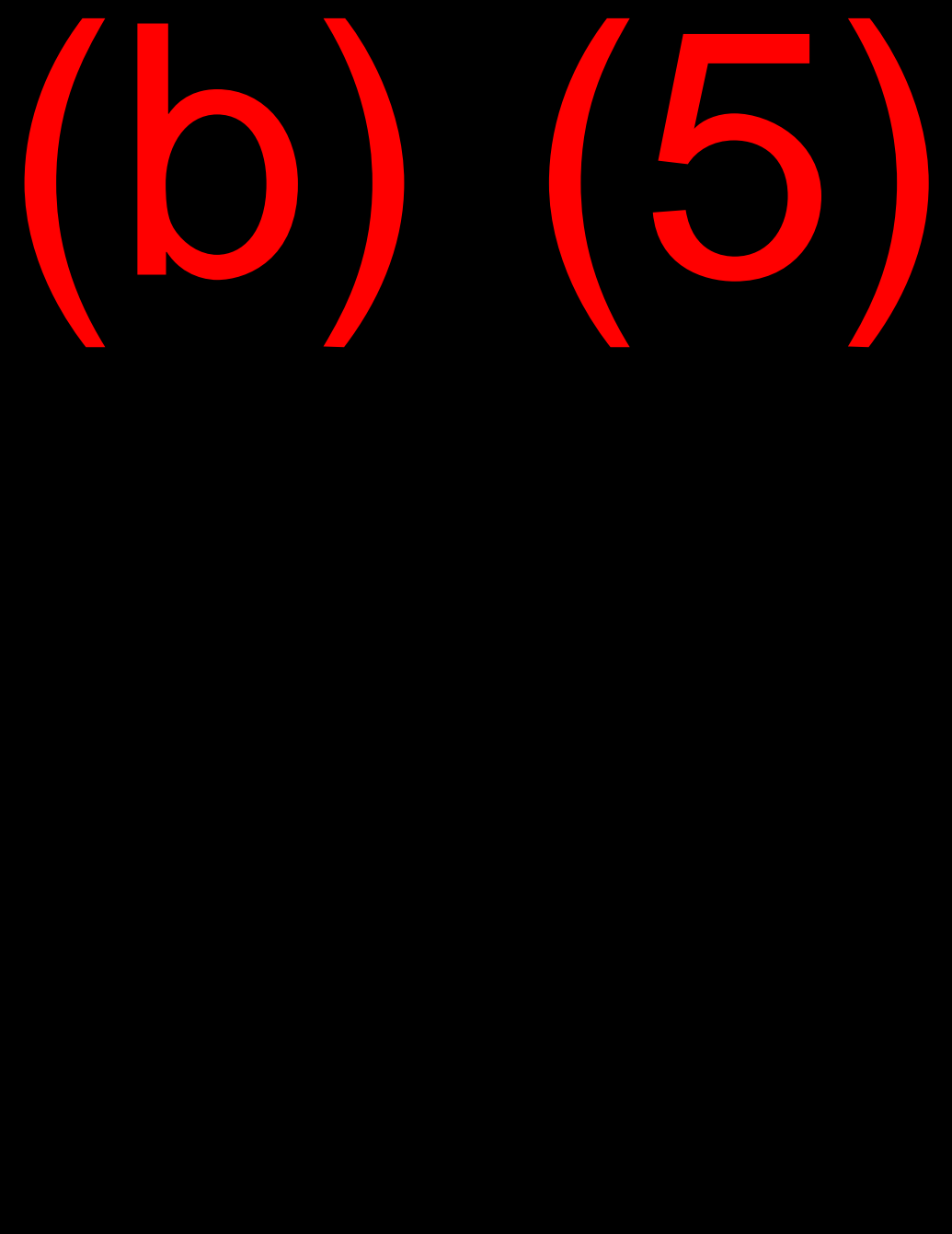
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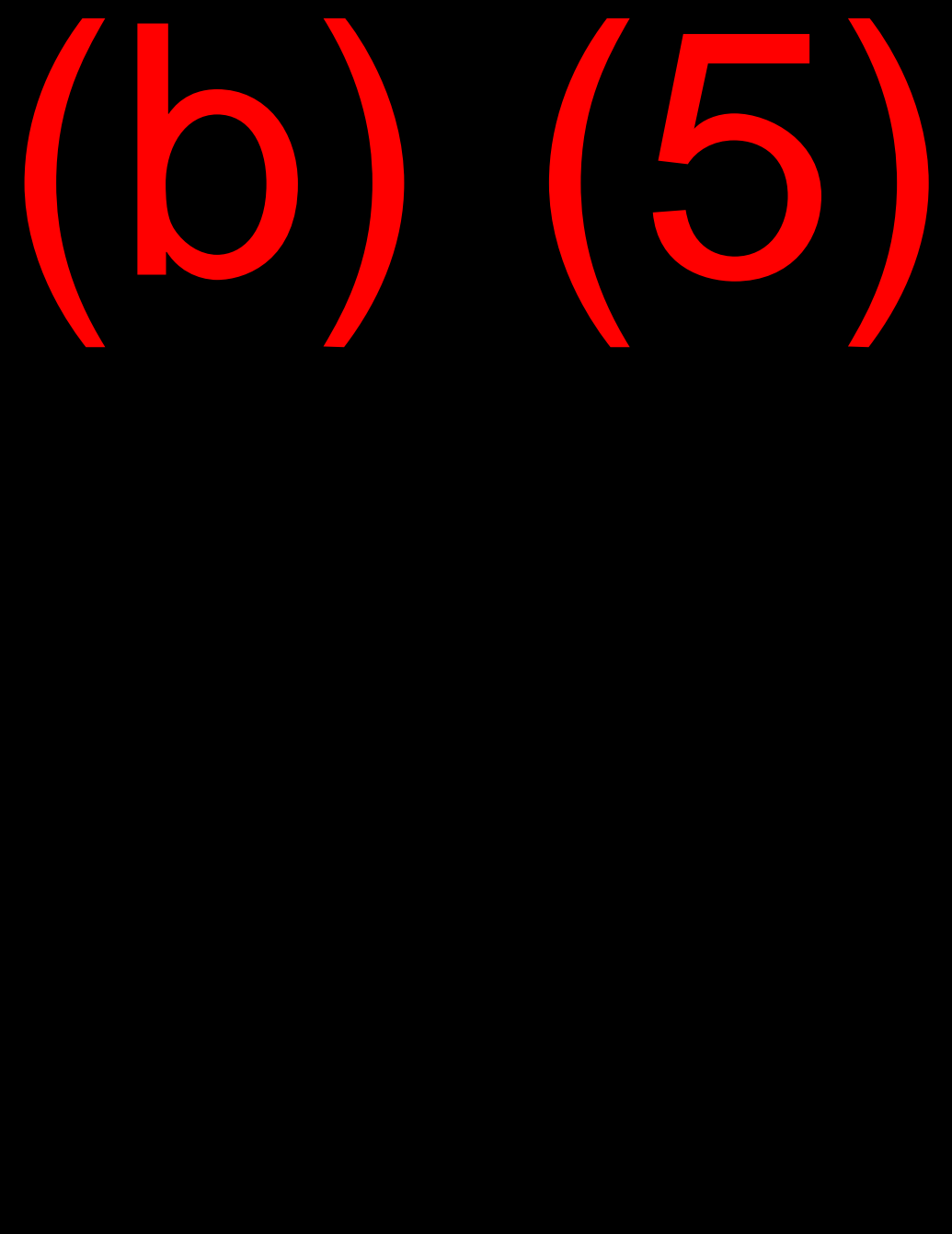
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November 24, 2017

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